IN THE HIGH COURT OF JUDICATURE AT MADRAS

(APPELLATE JURISDICTION)

MONDAY, THE SEVENTEENTH DAY OF DECEMBER

TWO THOUSAND AND SEVEN

PRESENT:

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA
AND
THE HONOURABLE MR.JUSTICE S.TAMILVANAN

W.A.NOS.929 AND 933 OF 2006

Bar Council of India
Represented by its Secretary,
No.21, Rouse Avenue,
Institutional area,
New Delhi-110 002. .. Appellant in both the Writ Appeals

vs.

1. Saveetha Institute of Medical and
Technical Sciences,
Deemed University,
Represented by its Registrar,
162, Poonamallee High Road,
Chennai-600 077.

2. The Tamil Nadu Dr.Ambedkar Law University,
rep. by the Registrar,
No.5, Greenways Road, Chennai-600 028.

3. Madras High Court Advocates Association,
Rep. by its Secretary G.Mohanakrishnan,
High Court Buildings, Chennai-600 104.

(Respondents 2 and 3 impleaded as party-respondents
-vide Order of Court dated 20.9.2006 made in
M.P.Nos.2 and 3 of 2006 in W.A.No.929 of 2006
M.P.Nos.2 to 4 of 2006 in W.A.No.933 of 2006)

4. The University Grants Commission,
rep. by its Secretary,
Bahadurshah Zafar Marg,
New Delhi-110 001.

(Respondent No.4 impleaded as party-respondent-
Vide Order of Court, dated 18.7.2007)
.. Respondents in W.A.No.929 of 2006

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1. Shanmuga Arts, Science, Technology and
Research Academy (SASTRA),
Deemed to be a University,
No.8, Dr.Subbarayan Nagar Main Road,
Kodambakkam, Chennai-600 024
Represented by its Registrar R.Kandasami

2. The Tamil Nadu Dr.Ambedkar Law University,
Rep. by the Registrar,
No.5, Greenways Road,
Chennai-600 028.

3. The Students Federation of India (S F I),
Rep. by its State Secretary Selva.

4. Madras High Court Advocates' Association,
rep. by its Secretary G.Mohanakrishnan,
High Court Buildings, Chennai-600 104.

(Respondents 2 to 4 impleaded as
party respondents-vide Order of Court
dated 20.9.2006 made in
M.P.Nos.2 and 3 of 2006 in W.A.No.929 of 2006
M.P.Nos.2 to 4 of 2006 in W.A.No.923 of 2006).

5. The University Grants Commission,
rep. by its Secretary,
Bahadurshah Zafar Marg,
New Delhi-110 001.

(Respondent 5 impleaded as party respondent
-Vide Order of Court dated 18.7.2007
made in M.P.No.1 of 2007 in W.A.No.933 of 2006)
.. Respondents in W.A.No.933 of 2006

Writ Appeal No.929 of 2006 filed against the order of this Court dated 20.4.2006 in W.P.No.10231 of 2006 AND

Writ Appeal No.933 of 2006 filed against the order of this Court dated 21.3.2006 in W.P.No.24928 of 2005.

W.P.NOS.12231/2006 AND 24928/2005:

Petitions presented under article 226 of the Constitution of India to issue writ of certiorarified mandamus calling for the records (i) of the respondent relating to its order in BCI:D:197:2006 (LE/Afflin) dated 24.2.2006 and quash the same and directing the respondent to accept and consider the application of the petitioner dated 14.12.2005 for starting a Law College to impart five year Law Course is B.A.LLB (Hons) from the academic year 2006-07 with an intake of 320 students without reference to the objection of the State Government (WP.No.12231/2006); and

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(ii) relating to the order of the respondent in BCI D.1044/2005 (LE.Mtg)(2 TN-N) dated 1.7.2005 and quash the same and direct the respondent to grant approval of the degree BA LLB and LLB of the petitioner under Shanmugha Arts Science Technology and Research Academy (SASTRA) Thanjavur, Tamil Nadu (WP.No.24928/2005), respectively.

ORDER : The Writ Appeals coming on for hearing on Friday the 24th day of August, 2007 upon perusing the grounds of appeals, the orderof th Honourable Mr.Justice D.Murugesan, dated 20.4.2006 and 21.3.2006, respecting and made in the exercise of the Special Original Jurisdiction of the High Court in Writ Petition Nos.10231/2006 and 24928/2005, respectively and all other papers material to these case, and upon hearing the arguments of -

For appellant in both the Writ Appeals: Mr.K.Venkatakrishnan

For respondent-1 in W.A.No.933 of 2006: Mr.G.Rajagopal,
Senior Advocate for
M/s.G.R.Associates.

For respondent-1 in W.A.No.929 of 2006: Mr.R.Muthukumarasamy,
Senior Counsel for
Mr.S.T.S.Murthi

For respondent-2 in both Writ Appeals : Mr.V.M.G.Ramakkannan

For respondent-3 in W.A.No.929 of 2006
and for respondent-4 in W.A.No.933 of 2006: Mr.R.C.Paul Kanagaraj

For respondent-3 in W.A.No.933 of 2006
: Mr.N.G.R.Prasad, Senior Counsel
for Mr. R. Rajaram.

For respondent-4 in W.A.No.929 of 2006
and respondent-5 in W.A.No.933 of 2006: Mr.P.R.Gopinathan

the court made the following order :

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Judgment

F.M.Ibrahim Kalifulla,J.

The Bar Council of India (for short, BCI), represented by its Secretary is the appellant in both the Writ Appeals. The appellant-BCI is aggrieved by the order of the learned single Judge dated 20.4.2006 in W.P.No.10231 of 2006 (in W.A.No.929 of 2006) and dated 21.3.2006 passed in W.P.No.24928 of 2005 (in W.A.No.933 of 2006).

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2. By the orders impugned in these Writ Appeals, the learned single Judge has taken the view in the Writ Petitions filed by the two Deemed Universities, namely Saveetha Institute of Medical and

Technical Sciences (for short, SAVEETHA) and Shanmuga Arts, Science, Technology and Research Academy (for short, SASTRA) were governed by the provisions of the University Grants Commission Act (for short, UGC Act) and therefore, Section 6 of the Tamil Nadu Dr.Ambedkar Law University Act, 1996 will have no application to such Deemed Universities (the first respondent in the Writ Appeals). The learned single Judge therefore set aside the order of the appellant-BCI directing the writ petitioners-Deemed Universities, to get "No Objection Certificate" (for short, NOC) from the State Government and recognition letter for the purpose of granting approval of "Affiliation" to the writ petitioners to start a Law course. The learned Judge also directed the appellant-BCI to consider the application of the first respondent-Writ Petitioners (Deemed Universities) for approval of the Affiliation to B.A., LL.B. (five years-integrated) and LL.B. (three years) Law courses without reference to the NOC from the State Government. The learned single Judge however made it clear that the appellant-BCI is entitled to consider the request for approval of the Affiliation on the basis of its inspection report.

3. Assailing the orders of the learned single Judge, Mr.Venkatakrishnan, learned counsel appearing for the appellant-BCI, after referring to Rules 16,17 and 18 of Part IV, Section A of the amended BCI Rules, Section 2(a), (p) and (q), 5(v) of the Tamil Nadu Dr.Ambedkar Law University Act (for short, "Dr.Ambedkar Law University Act"), Section 3 of the UGC Act and Section 7(h) and (i) and 49 (af) and (d) of the Advocates Act, contended that by virtue of the above provisions, the BCI is entitled to insist for the NOC from the State Government and also a recognition letter from Dr.Ambedkar Law University for the purpose of considering the application of the writ petitioners-Deemed Universities, for grant of approval of Affiliation. The main thrust of the argument of the learned counsel appearing for the appellant-BCI was based on Section 6(1) and (2) of Dr.Ambedkar Law University Act read along with Rules 16 and 18(2) of Part IV, Section A of the BCI Rules. The learned counsel for the BCI submitted that by virtue of Section 6(1) and (2) of Dr.Ambedkar Law University Act read along with Rules 16 and 18(2) of Part IV, Section A of the amended BCI Rules, unless an Affiliation from Dr.Ambedkar Law University and the NOC from the State Government is obtained, the BCI cannot grant approval of the Affiliation. The learned counsel for BCI relied upon 2000 (7) SCC 746 (Maharishi Dayanand University vs. M.L.R.Saraswati College of Education), 2003 (3) SCC 321 (St.John's Teachers Training Institute vs. Regional Director, NCTE), 2005 (3) SCC 212 (Govt. of A.P. vs. J.B.Educational Society) and 2005 (4) SCC 89 (Krishnasamy Reddiar Educational Trust vs. Member Secretary, National Council for Teacher Education).

4. Mr.V.M.G.Ramakkannan, learned counsel appearing for the second respondent--Dr.Ambedkar Law University, in his submissions stated that the provisions under Dr.Ambedkar Law University Act contemplated a ban for starting a Law course by an institution or University within the University area as defined under Dr.Ambedkar Law University Act in the State of Tamil Nadu without the permission of Dr.Ambedkar Law University and the NOC from the State Government. According to the learned counsel for Dr.Ambedkar Law University, the Deemed Universities do not enjoy equal status and privileges like

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that of the Universities in the eye of law.

5. Mr.P.R.Gopinathan, learned Standing Counsel appearing for the fourth respondent in W.A.No.929 of 2006 and the fifth respondent in W.A.No.933 of 2006, namely the UGC, in his submissions, stated that the Deemed Universities, when once accorded such status, under the provisions of the UGC Act, are conferred with all the powers that are available to Universities in the eye of law, except the power of Affiliation of other Colleges with it.

6. Mr.N.G.R.Prasad, learned counsel appearing for the impleaded third respondent in W.A.No.933 of 2006, namely The Students Federation of India (for short, S F I), in his submissions contended that by virtue of the provisions contained under the Advocates Act read along with Rule 18(d)(1) and (2) of Part IV, Section A of the amended BCI Rules, the Parliament thought it fit to bestow specific powers with the BCI to ensure that promotion of legal education is carried out with care and caution and therefore, in pursuit of the said aim, when the BCI has specified in Rule 18(b) and (2) of Part IV, Section A of the amended BCI Rules that the NOC should be obtained from the State Government, the learned single Judge was not right in rejecting the stand of the BCI by holding that the conferment of "Deemed University status" under the UGC Act would deprive the BCI to insist on a vital specification under its Rules which are framed under the provisions of another Central Act, namely the Advocates Act. According to the learned counsel for the S F I, the purport of such a Rule to direct the Deemed Universities to get the NOC from the State Government, is to ensure the quality education in legal matters and the learned single Judge was not right in holding that the issue was covered by the UGC Act, an occupied field and thereby the insistence of NOC from the State Government is not required. The learned counsel for the S F I relied upon 2007 (2) SCC 202 (Bar Council of India vs. Board of Management, Dayanand College of Law), 2004 (11) SCC 755 (Bharati Vidyapeeth vs. State of Maharashtra), 2005 (4) SCC 89 (cited supra), 2006 (4) SCC 65 (National Council for Teacher Education vs. Committee of Management), 2006 (3) L.W. 499 (Division Bench of Madras High Court) (Sathyabama Institute of Science and Technology (A Deemed to be University), etc. vs. Union of India and two others) and AIR 1968 SC 888 (O.N.Mohindroo vs. Bar Council of Delhi and others).

7. As against the above submissions, Mr.G.Rajagopal, learned Senior Counsel appearing for the first respondent-SASTRA in W.A.No.933 of 2006, in his submissions stated that the "Deemed University status" was conferred on the SASTRA by virtue of the provisions contained in Section 3 of the UGC Act and that when once such a status was conferred, by virtue of Section 22 of the UGC Act, the SASTRA is entitled to confer Degrees which are prescribed under the provisions of Dr.Ambedkar Law University Act, which inter-alia included Degrees in Law, namely Bachelor of Law, Master of Law, etc., and therefore, as a Deemed University, the SASTRA need not have to seek for further Affiliation from Dr.Ambedkar Law University. According to the learned Senior Counsel appearing for SASTRA, by virtue of the provisions contained under the UGC Act, the Deemed Universities are to be treated as Universities themselves in their activities in the matter of education, except Affiliation of other

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Colleges with them and therefore, their status having been governed by the provisions of the UGC Act, which is a Central Legislation, which in turn falls under Entry 66 of the List-I – Union List (7th Schedule, Article 246) under the Constitution of India, the State Legislation, namely Dr.Ambedkar Law University Act, will have no application to the SASTRA. The learned counsel therefore contended that Section 6 of Dr.Ambedkar Law University Act cannot be extended to the SASTRA in order to insist for NOC from the State Government for "recognition" by Dr.Ambedkar Law University to consider the application filed by the SASTRA for grant of approval of Affiliation by the appellant-BCI. The learned Senior Counsel appearing for SASTRA relied upon the following decisions in support of his submissions:

(i) 2004 (11) SCC 755 (cited supra);
(ii) AIR 1999 SC 1167 (V.Sudeer vs. Bar Council of India);

(iii) AIR 1996 SC 2384 (T.K.V.T.S.S.Medical Educational and Charitable Trust. vs. State of Tamil Nadu);

(iv) 2006 (3) M.L.J. 1037 (Division Bench of Madras High Court) (State of Tamil Nadu vs. V.S.B.Educational Trust);

(v) 1987 (4) SCC 671 (Osmania University Teachers' Association vs.State of A.P);
(vi) AIR 1999 SC 1762 (Shivaji University vs. Bharti Vidyapeeth);
(vii) AIR 2001 SC 2861 (Bharathidasan University vs. All India Council for Technical Education);

(viii) 1979 (Vol.118) I T R 235 (Division Bench of Madras High Court) (Addl. C.I.T. vs. Aditanar Educational Institution) and
(viii) 2005 (5) SCC 420 (Prof.Yashpal vs. State of Chattisgarh).

8. Mr.R.Muthukumarasamy, learned Senior Counsel appearing for the first respondent in W.A.No.929 of 2006, namely Saveetha Institute of Medical and Technical Sciences, Deemed University (for short, SAVEETHA), submitted that there is no provision of law requiring the Deemed Universities to apply for and obtain a permission for establishing a Law course and therefore, Rule 18(2) of Part IV, Section A of the amended BCI Rules cannot be put against them. The learned Senior Counsel appearing for the SAVEETHA therefore contended that any law which is putting forward a requirement for getting permission, must be a valid law in the context of the Advocates Act, and the BCI Rules which are referable to Entry 77 and Entry 78 of List-I of Seventh Schedule (Article 246) of the Constitution of India and there can be no law or a State Legislation requiring permission of the State Government to start a Law course. The learned counsel appearing for the SAVEETHA also contended that the Deemed Universities cannot be treated as institutions or Colleges for the purpose of any Act, in view of the provisions of the UGC Act. The learned counsel appearing for the SAVEETHA referred to similar provisions of law like that of Section 5(v) of Dr.Ambedkar Law University Act as contained in the M.G.R. Medical University Act, which was struck down by the Supreme Court in the judgment reported

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in 1996 (3) SCC 15 = AIR 1996 SC 2384 (T.K.V.T.S.S. Medical Educational and Charitable Trust vs. State of Tamil Nadu). The learned Senior Counsel appearing for the SAVEETHA also relied upon the following decisions in support of his submissions:

(i) AIR 1968 SC 888 (cited supra);
(ii) 2007 (2) SCC 202 (cited supra);
(iii) 2006 (3) SCALE 675
(State of Maharashtra vs. S.D.S.S.Mahavidyalaya);

(iv) 2005 (2) CTC 182 (Madras High Court-Division Bench)
(Bharathidasan University vs. Dhanalakshmi Srinivasan Educational and Charitable Trust) and
(v) 1995 AIR SCW 3701 (State of Maharashtra vs. Manubhai Pragaji Vashi).

9. In order to appreciate the rival contentions of the parties, we feel it appropriate to extract the relevant provisions which were referred to by the learned counsel for the respective parties. Such provisions are Sections 2(a), (p) and (q), 5(v) and 6 of the Tamil Nadu Dr.Ambedkar Law University Act, Sections 7(h) and (i) and 49(1)(af) and (d) of the Advocates Act, Sections 2(f), 3 and 22 of the UGC Act and Rules 16, 17 and 18(2) of Part IV, Section A of the amended BCI Rules. The provisions referred to above read as under:

The Tamil Nadu Dr.Ambedkar Law University Act:

"Section 2: Definitions:
Section 2(a): Affiliated college:
'Affiliated College' means a college or institution situate within the University area and affiliated to the University; a college deemed to be affiliated to the University and an autonomous college;
Section 2(p): University:
'University' means the Tamil Nadu Dr.Ambedkar Law University.
Section 2(q): University area:
'University area' means the area to which this Act extends under sub-section (2) of section 1 excluding the Annamalai Nagar as defined in clause (a) of Section 2 of the Annamalai University Act, 1928.

Powers and functions of University:
Section 5(v):
The University shall have the powers,--
(i) ...
(ii)...
(iii) ...
(iv) ...
(v) to affiliate colleges to the University under the conditions prescribed and to withdraw such affiliation;

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Provided that no college shall be affiliated to the University unless the permission of the Government to establish such College has been obtained and the terms and conditions, if any, of such permission has been complied with.

Colleges not to be affiliated to any other University and recognition of college by University:

Section 6: (1) No Law college or institution imparting legal education within the University area shall be affiliated to any other University other than the Tamil Nadu Dr.Ambedkar Law University.

(2) No Law college or institution imparting legal education affiliated to, or associated with, or maintained by, any other University, whether within the State of Tamil Nadu or outside the State of Tamil Nadu, shall be recognised by the University for any purpose except with the prior approval of the Government and the University concerned."

The Advocates Act, 1961:
"Sections 7(h) and (i):
Section 7: Functions of Bar Council of India:

(h) to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils;

(i) to recognise Universities whose degree in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect Universities or cause the State Bar Councils to visit and inspect Universities in accordance with such directions as it may give in this behalf;

Section 49(1)(af) and (d):
Section 49: General power of the Bar Council of India to make rules:--

(1) The Bar Council of India may make rules for discharging its functions under this Act and, in particular, such rules may prescribe--

(af) the minimum qualifications required for admission to a course of degree in law in any recognised University.

(d) the standards of legal education to be observed by Universities in India and the inspection of Universities for that purpose."

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University Grants Commission Act, 1956:

"Section 2(f): Definition of "University":
"University" means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognised by the Commission in accordance with the regulations made in this behalf under this Act.

Section 3: Application of Act to institutions for higher studies other than Universities—
The Central Government may, on the advice of the Commission, declare, by notification in the Official Gazette, that any institution for higher education, other than a University, shall be deemed to be a University for the purposes of this Act, and on such a declaration being made, all the provisions of this Act shall apply to such institution as if it were a University within the meaning of clause (f) of Section 2.

Section 22 : Right to confer degrees--
(1) The right of conferring or granting degree shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University under section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees.
(2) Save as provided in sub-section (1), no person or authority shall confer, or grant, or hold himself or itself out as entitled to confer or grant, any degree.
(3) For the purposes of this section, "degree" means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette."

Amended Bar Council of India Rules:
Part IV. Section A: Rules 16, 17 and 18(2):

"Rule 16: A law college affiliated to a university shall by 1st June 1987 be an independent Law College and shall cease to be a department attached to a college.

Rule 17: (1) No college, after the coming into force of these rules, shall impart instruction in a course of study in law for enrolment as an advocate unless its affiliation has been approved

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by the Bar Council of India.

(2) An existing Law College shall not be competent to impart instruction in a course of study in law for enrolment as an advocate if the continuance of its affiliation is disapproved by the Bar Council of India.

Rule 18(2): Every law college applying for approval of affiliation shall obtain permission/no objection for establishment of law college from Government or Higher Education Department of the State, if the same is a requirement under the prevailing law or any order in the State."

10. To reiterate the contention of the learned counsel appearing for the appellant, namely the BCI, the submission was mainly based on Section 6 of Dr.Ambedkar Law University Act, 1996 and Rule 18(2) of Part IV, Section A of the amended BCI Rules. Under Rule 18(2) of Part IV, Section A of the amended BCI Rules, the stipulation is to the effect that for the grant of approval of Affiliation, permission/No Objection for establishment of a Law College should be obtained from the Government or Higher Education Department of the State, only if the same is a requirement under the prevailing law or any order in the State. Therefore, what is to be examined in respect of a "Deemed University" when it applies for approval of Affiliation before the BCI, is whether there is any requirement under any prevailing law of the State or any order of the State which stipulates that such permission/No Objection should be obtained for that purpose. It will have to be stated that Rule 18(2) of Part IV, Section A of the amended BCI Rules by itself does not stipulate that every "Deemed University" when it applies for approval of Affiliation should mandatorily obtain the permission or No Objection from the State Government or Higher Education Department of the State. Therefore, it will have to be seen whether the reliance placed upon Section 6 or Section 5(v) of Dr.Ambedkar Law University Act would fit in within the requirements stipulated under Rule 18(2) of Part IV, Section A of the amended BCI Rules, and for that purpose, when we examine Section 6 of Dr.Ambedkar Law University Act, we find that Section 6(1) only talks of Affiliation of any Law College or institution imparting legal education with Dr.Ambedkar Law University, if such a Law College or institution is to function within the "University area" as defined under Section 2(q) that Act. Under Section 2(q) of Dr.Ambedkar Law University Act, the "University area" has been defined to mean the whole of the State of Tamil Nadu excluding Annamalai Nagar as defined in Clause (a) Section 2 of the Annamalai University Act, 1928. Therefore, a Law College simpliciter or an institution, imparting legal education, definitely would stand apart from a "University" as defined under the provisions of the UGC Act. Therefore, there is no question of Affiliation of a course to be started by a "Deemed University" with Dr.Ambedkar Law University, as the same is not covered by Section 6(1) of Dr.Ambedkar Law University Act. We say so because, a perusal of Sub-section (2) of Section 6 of Dr.Ambedkar Law University Act specifically deals with Law College or institution imparting legal education which are 'affiliated" with

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other University. As far as Sub-section (2) of Section 6 of Dr.Ambedkar Law University Act is concerned, a close reading of the said provision discloses that the same does not contemplate Affiliation of any Law College or institution imparting legal education with Dr.Ambedkar Law University. The specific prescription under Sub-section (2) of Section 6 of Dr.Ambedkar Law University Act relates to recognition by Dr.Ambedkar Law University for any purpose. Therefore, only in the event of recognition being sought for by a Law College or institution imparting legal education which are affiliated with any other University either within the State of Tamil Nadu or outside the State of Tamil Nadu, for any purpose, and in such an event, the law requires that prior approval of the Government and the University concerned with which the Law College or the institution is affiliated, which has to be obtained. In other words, if any Law College or any institution which are affiliated with any other University within the State of Tamil Nadu or outside the State of Tamil Nadu approaches Dr.Ambedkar Law University for recognition for any particular purpose, in such an event, by virtue of Section 6(2) of Dr.Ambedkar Law University Act, prior approval of the Government and the University with which such Law College or institution is affiliated has to be obtained. Therefore, in our considered opinion, Section 6(1) and (2) of Dr.Ambedkar Law University Act will have no application at all in a situation where a "Deemed University" applies for approval of "recognition/affiliation" to start a Law College or institution imparting legal education, unless such "Deemed University" intends to get recognition of Dr.Ambedkar Law University as well, for any purpose for which it seeks for such a recognition.

11. When once we steer clear of the said position with reference to which application of Section 6 of Dr.Ambedkar Law University Act, 1996 to a "Deemed University", which applies for approval of Affiliation with the BCI, the only other provision to be examined is Section 5(v) of Dr.Ambedkar Law University Act, which talks of Affiliation of Colleges with Dr.Ambedkar Law University. Section 5 of Dr.Ambedkar Law University Act talks of the powers and functions of Dr.Ambedkar Law University and of very many subjects, including Affiliation of Colleges with it. Under the prescribed conditions and its power to withdraw such Affiliation, the proviso to Section 5(v) of Dr.Ambedkar Law University Act, 1996 specifically mentions that no College should be affiliated with Dr.Ambedkar Law University, unless the permission of the Government to establish such a College has been obtained and the terms and conditions if any, of such permission has been complied with.

12. A combined reading of Sections 5(v) and 6(1) of Dr.Ambedkar Law University Act, 1996 discloses that while under Section 6(1), no College or institution imparting legal education can be Affiliated with any other University within the "University area" except with Dr.Ambedkar Law University, under Section 5(v), the grant of such Affiliation by Dr.Ambedkar Law University can be made only with the permission of the Government and compliance of the terms and conditions that are adumbrated with the permission granted by the Government. Therefore, the question for consideration is whether the restriction imposed under Section 6(1) of Dr.Ambedkar Law University Act, 1996, restricting the scope of Affiliation of any Law College or institution imparting legal education only with

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Dr.Ambedkar Law University be applicable to "Deemed University", when such a step is taken within the "University area", namely within the State of Tamil Nadu.

13. In the above context, we have to necessarily examine the implication of the provisions of the Central Act, the UGC Act. A "Deemed University" comes into existence on a declaration being made by the Central Government under Section 3 of the UGC Act. By virtue of such a declaration made under Section 3 of the UGC Act, a "Deemed University" is always to be "Deemed" as a "University" as defined under Section 2(f) of the UGC Act. By virtue of such a deeming fiction of a "Deemed University" as any other University as defined under Section 2(f) of the UGC Act, it gets the recognition of the UGC in accordance with the Regulations prescribed or made under the Act. When once such a recognition of the UGC over the "Deemed University" comes into operation, all the powers and functions of the UGC as stipulated under Sections 12 to 19 of the UGC Act becomes automatically applicable. Such an application of the powers and functions of the UGC as provided under Chapter-III of the UGC Act, would consequentially result in an over-all supervision and control of the Commission over the "Deemed University" as if it is a regular "University" as defined under Section 2(f) of the UGC Act. Such an over-all supervisory control of the UGC would require every such "Deemed University" to function under the direct supervision with regard to the grant of funds, regulation of fees and prohibition of donations in certain cases, the financial status, periodical inspection of the University, in order to ensure that proper maintenance and administration of the University are carried on in the interest of the students and also for the proper upkeep and maintenance of the standards of education in such Universities. In fact, the provisions contained in Chapter III of the UGC Act (Sections 12 to 19) disclose that the UGC has got absolute powers over the Universities in all its functions and thereby the Universities will always be answerable to the lawful dictates of the UGC. It is subject to the above supervision and control of the UGC, the further benefits are provided to such Universities under Section 22 of the UGC Act. The "right to confer Degrees" under Section 22 of the UGC Act is made available to a University including an institution deemed to be a "University" as declared under Section 3 of the UGC Act, which right is not exercisable by any other educational institution. Therefore, indisputably, the only difference between a "University" and a "Deemed to be University" is that while a "University" is empowered to grant Affiliation for other Colleges and institutions, the "Deemed to be University" is deprived of such a function alone. Barring the power of Affiliation of other Colleges with it, a Deemed to be University when once declared under Section 3 of the UGC Act, enjoys all other powers and functions that are available to a regular University, established or incorporated by or under a Central Act or State Act or a Provincial Act.

14. Under Sub-section (3) of Section 22 of the UGC Act, the Degrees which a University is empowered to confer are the ones which are to be specified by the UGC by Notification in the Official Gazette and by Notification No.F-87-9/58(CUP), dated 1.12.1958, the UGC published in the Government of India Gazette Part-III Section 4, the Degrees which are to be conferred by the Universities as provided

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for under Sub-section (3) of Section 22 of the UGC Act. Such a Notification was published with the approval of the Central Government. The said Notification provided three kinds of Degrees, namely Bachelor's Degree, Master's Degree and Doctorate Degree. Bachelor of Laws (B.L), Bachelor of Law or Laws (LL.B) and Bachelor of Civil Law (BCL) under the category of Bachelor's Degree, Master of Laws (M.L) and Master of Law or Laws (LL.M) under the Master's Degree and Doctorate of Law or Laws (LL.D) and Doctorate of Laws (D.L) under the Doctorate Degree, have been notified as Degrees for the purpose of Section 22 under the said Notification.

15. Section 25 of the UGC Act empowers the Central Government to make Rules to carry out the purposes of the Act. Sub-clause (2) (e), (f) and (g) of Section 25 of the UGC Act empowers the Central Government to frame Rules as regards additional functions to be performed by the UGC under Clause (j) of Section 12 of the UGC Act and the returns and information which are to be furnished by the Universities in respect of their financial position or standards of teaching and examination maintained therein and the inspection of Universities and the inspection of Universities.

16. Under Section 26 of the UGC Act, the UGC itself has been invested with the powers to make Regulations consistent with the Act and the Rules by notifying the same in the Official Gazette. Under Sub-clause (1)(e), (f),(g),(h),(i) and (j) of Section 26 of the UGC Act, such Regulations can be framed in respect of the various activities of the Universities in the matter of qualifications of the teaching staff with particular reference to the branch of education, minimum standards of instructions for the grant of any Degree by any University, the maintenance of standards and the co-ordination of work or facilities in the Universities and the matters in respect of charging of fees and scales of fees that may be charged by a College. Such Regulations to be framed by the UGC can be notified only with the previous approval of the Central Government by virtue of Sub-section (2) of Section 26 of the UGC Act. Under Section 28 of the UGC Act, all the Rules and Regulations are to be laid before the Parliament as specified therein.

17. Therefore, a conspectus reading of Sections 2(f), 3, 12 to 19, 22, 25, 26 and 28 of the UGC Act discloses that the functioning of a "Deemed to be University" is under the direct supervision and control of the UGC, which in turn is controlled by the Central Government, by virtue of the formulation of the Rules to be framed under the UGC Act. Subject to such stringent provisions having superfluous control over the "Deemed Universities" exercised by the UGC and the Central Government, a "Deemed University" has been invested with the powers to grant Degrees, namely Bachelor, Master and Doctorate Degrees to the candidates who undergo the courses of study in such "Deemed Universities".

18. In the above backdrop of the application of the provisions of the UGC Act over the "Deemed Universities", when we consider the implication of the provisions contained in Dr.Ambedkar Law University Act, 1996 over such "Deemed Universities", we deem it appropriate to refer to the Constitutional provisions relating to the Legislative competence of the State and the Centre and the decisions of the

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Supreme Court, our High Court and the other High Courts on this very issue.

19. Primarily, the "higher education" is governed by Entry 66 of List-I—Union List of Seventh Schedule (Article 246) of the Constitution of India, which reads as under:

> "Entry 66: Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions".

Subject to Entry 66 of List-I-Union List of Seventh Schedule (Article 246) of the Constitution of India, under Entry 25 of List-III-Concurrent List of Seventh Schedule, a provision has been made as under:

> Entry 25: Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List-I; vocational and technical training of labour."

One other Entry is Entry 32 as found in List-II-State List of Seventh Schedule of Article 246, which is to the following effect:

> "Entry 32: Incorporation, regulation and winding up of corporations, other than those specified in List-I, and universities; unincorporated trading, literacy, scientific, religious and other societies and associations; co-operative societies."

The residuary power under Entry 25 of List-III-Concurrent List of Seventh Schedule is subject to the provisions contained in Entry 66 of List-I (Union List) of Seventh Schedule. Therefore, any Legislation of the State Government by invocation of Entry 25 of List-III-Concurrent List of Seventh Schedule has to yield to superior application of an enactment of the provisions brought into force by virtue of Entry 66 of List-I-Union List of Seventh Schedule by the Central Government.

20. In the above context, when we refer to the various decisions of the Supreme Court, the legal position is abundantly set out without any ambiguity. In the decision of the Supreme Court reported in 1987 (4) SCC 671 (Osmania University Teachers' Assn. vs. State of A.P), the Supreme Court has considered the Constitutional validity of State Act called "Andhra Pradesh Commissionerate of Higher Education Act, 1986 (Act 26 of 1986) vis-a-vis the UGC Act, 1956. Ultimately, the Supreme Court, after making a detailed comparison of the various provisions of both the Acts, held as under in paragraphs 25 and 26:

> "25. It is apparent from this discussion that the Commissionerate Act has been drawn by and large in the same terms as those of the UGC Act. The Commissionerate Act, as we have earlier seen also contains some more provisions. Both the enactments, however, deal with the same subject-matter. Both deal with the coordination and

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determination of excellence in the standards of teaching and examination in the Universities. Here and there, some of the words and sentences used in the Commissionerate Act may be different from those used in the UGC Act, but nevertheless, they convey the same meaning. It is just like referring to the same person with (sic by) different descriptions and names. The intention of the legislature has to be gathered by reading the statute as a whole. That is a rule which is now firmly established for the purpose of construction of statutes. The High Court appears to have gone on a tangent. The High Court would not have fallen into an error if it had perused the UGC Act as a whole and compared it with the Commissionerate Act or vice versa.

26. In Prem Chand Jain v. R.K. Chhabra (1984 (2) SCR 883 : 1984 (2) SCC 302: 1984 SCC (Cri) 233) this Court has held that the UGC Act falls under Entry 66 of List I. It is then unthinkable as to how the State could pass a parallel enactment under Entry 25 of List III, unless it encroaches Entry 66 of List I. Such an encroachment is patent and obvious. The Commissionerate Act is beyond the legislative competence of the State Legislature and is hereby declared void and inoperative."

21. In AIR 1999 Madras 82 (R.Sivaraman vs. Registrar, M.G.R.Medical University, Guindy), a Division Bench of our High Court, while construing the provisions of Dr.M.G.R.Medical University Act (Act 37 of 1987) vis-a-vis the "Deemed University status" accorded to Madras Medical College (for short, MMC) under the UGC Act, has recorded the contentions in paragraphs 4 and 6 of the decision, which are to the following effect:

"4. ... According to the petitioners, the said declaration of the status of Madras Medical College as the Deemed University has no impact on the petitioners continuing as members of the Senate or Governing Council under the provisions of the University Act; the Madras Medical College continues to remain in the Schedule of the Act dehors declaration of the College as a Deemed University; the Madras Medical College cannot be disaffiliated until the existing students taking degree and Post-graduate course complete their tenure of course. Further, the Schedule under the University Act being an enactment of the Legislature of Tamil Nadu, having received the assent from the President, cannot be amended though by an executive act. ..."

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"6. ... It is submitted that the declaration of the Chennai Medical College as

"Deemed-to-be University" has impact, as it takes away the status of affiliated institution and confers the status of an independent University; Section 3 of U.G.C. Act provides that on such declaration being made, all the provisions of the U.G.C. Act shall apply to such a Deemed University; as per Section 22 of the U.G.C. Act, the right to conferring or granting degrees shall be exercised only by University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution Deemed to be University under Section 3 or an institution specially empowered by Act of Parliament to confer or grant degrees. ..."

On the above contentions, the Division Bench of this Court, in the said decision, has held as under in paragraph 13:

"13. It is not disputed that the Central Government has issued Notification No.F-9-3/97-U.3, dated 7th July, 1998, which was published in the Gazette of India, under Section 3 of the U.G.C. Act, on the advice of the University Grants Commission, exercising the powers conferred by Section 3 of the U.G.C. Act, declaring the Chennai Medical College and Research Institute, Chennai as Deemed-to-be University for the purpose of the aforesaid Act with immediate effect subject to a review after three years. The said notification was also republished in the Tamil Nadu Government Gazette dated July 21, 1998. As is evident from Section 3 of the U.G.C. Act, the Central Government, on the advice of the University Grants Commission, has declared by Notification, the Chennai Medical College, Chennai, to be a Deemed-to-be University under Section 3 of the U.G.C. Act. A plain reading of Section 3 of the U.G.C. Act does not show that anything more is required to be done further in order to deem any institution for higher education as Deemed University. In the said Section, it is also stated that all the provisions of the U.G.C. Act shall apply to such institution, as if it were University within the meaning of Section 2(f) of the U.G.C. Act. Hence, it is very clear that on such declaration being made in regard to an institution for higher education as Deemed University, all the provisions of the U.G.C. Act shall apply and it becomes a University for the purposes of the U.G.C. Act, as per Section 2(f) of the said Act. It is not possible to accept the contention of the learned senior counsel for the petitioners as well as the learned special Government Pleader that something more is required to be done, even after the declaration that the Chennai Medical College, Chennai is a Deemed University under the U.G.C. Act, Section 3 of the

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U.G.C. Act is self-contained as regards the declaration of the status of an institution as a Deemed University. It is also not possible to say that the Notification issued under the said Section is merely an executive order. The Notification is issued by virtue of the powers conferred under Section 3 of the U.G.C. Act itself on the Central Government. From the date Chennai Medical College, Chennai, was declared to be a Deemed University as per Section 3 of the U.G.C. Act, by issuing a Notification by the Central Government, it ceases to be a 'college' or 'affiliated college' within the meaning of Section 2(a) and (d) of the University Act. The definitions of 'affiliated college' and 'college' given in the University Act do not take within them a 'Deemed-to-be University' and a University covered by Section 2(f) of the U.G.C. Act."

Again, in paragraph 15, the Division Bench of this Court in the said decision, has stated as under:

"15. ... It is not the question of they ceasing to be Professors of an affiliated College, but the affiliated College in which they are Professors has become a Deemed-to-be University. It is in the very nature of things and having regard to the provisions of both the Acts, it is not possible to hold that the Chennai Medical College, Chennai can continue to be an affiliated College and it can also be a Deemed-to-be University."

Further, in paragraph 16, the Division Bench of this Court, in the said decision, made it clear to the following effect:

"16. ... Merely because the Chennai Medical College, Chennai continues to be in the Schedule, it does not take away its status of Deemed- to-be University. By necessary and inevitable implication, the Chennai Medical College, Chennai is deemed to be excluded from the Schedule, the moment a declaration was made under Section 3 of the U.G.C. Act, conferring the status of Deemed-to-be University on it. Even assuming that there is some conflict between the U.G.C. Act and the University Act, to this limited extent, the declaration made under Section 3 of the U.G.C. Act prevails."

The Division Bench of this Court in the said decision also made a reference to the earlier decision of the Supreme Court reported in AIR 1996 SC 1963 = 1996 (4) SCC 76 (Parayankandiyal Eravath Kanapravan Kalliani Amma vs. K.Devi) and extracted paragraphs 80 and 81, which are also useful for our present purpose and the same are to the following effect:

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"80. When an Act of Parliament or a State legislature provides that something shall be

deemed to exist or some status shall be deemed to have been acquired, which would not have been so acquired or in existence but for the enactment, the Court is bound to ascertain the purpose for which the fiction was created and the parties between whom the fiction was to operate, so that full effect may be given to the intention of the legislature and the purpose may be carried to its logical conclusion. (See: J.K. Cotton Spg. & Wvg. Mills Ltd. v. Union of India, 1987 Supp SCC 350 : (AIR 1988 SC 191); American Home Products Corpn. v. Mac Laboratories (P) Ltd., (1986) 1 SCC 465 : (AIR 1986 SC 137)).

81. Lord Asquith in East End Dwellings Co. Ltd. v. Finsbury Borough Council (1951) 2 All.E.R. 587 observed that when one is bidden to treat an imaginary state of affairs as real, he must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which inevitably have flowed from it — one must not permit his 'imagination to boggle' when it comes to the inevitable corollaries of that state of affairs. (See also: M. Venugopal v. Divisional Manager, LIC, (1994 (2) SCC 323 : (AIR 1994 SC 1343)."

22. In AIR 1996 SC 2384 (T.K.V.T.S.S. Medical Educational and Charitable Trust vs. State of Tamil Nadu), the Supreme Court considered Section 5(5) of Dr.MGR Medical University Act along with its proviso, which is in pari-materia with Section 5(v) of Dr.Ambedkar Law University Act, 1996 vis-a-vis Section 10-A of the Indian Medical Council Act, 1956. Under Section 10-A of the Indian Medical Council Act, 1956, powers were vested with the Central Government for granting prior permission for establishment of a new Medical College, new course of study, etc. Under Section 5(5) of Dr.M.G.R.Medical University Act, it is provided that in order to establish a Medical College, one has to obtain prior permission of the State Government, the question arose as to which of the two provisions would prevail, namely Section 5(5) of Dr.M.G.R.Medical University Act, 1987 or Section 10-A of the Indian Medical Council Act, 1956. In that context, the Supreme Court highlighted what can be construed as repugnant as between two Legislations and stated the legal position as under in paragraph 26:

"26. It cannot, therefore, be said that the test of two legislations containing contradictory provisions is the only criterion of repugnance. Repugnancy may arise between two enactments even though obedience to each of them is possible without disobeying the other if a competent Legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field. The contention of Shri Sanghi that there is no repugnancy between the proviso to Section 5(5) of the Medical University Act and Sec.10-A of the Indian Medical Council Act because both can be complied with, cannot,

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therefore, be accepted. What has to be seen is whether in enacting Section 10-A of the Indian Medical Council Act, Parliament has evinced an intention to cover the whole field relating to establishment of new medical colleges in the country."

Ultimately, in paragraph 31, the Supreme Court has held that Section 5(5) of Dr.M.G.R. Medical University Act is repugnant to Section 10-A of the Indian Medical Council Act, insofar as it related to establishment of a new Medical College, which reads as under:

"31. It would thus appear that in Sec.10-A Parliament has made a complete and exhaustive provision covering the entire field for establishing of new medical colleges in the country. No further scope is left for the operation of the State legislation in the said field which is fully covered by the law made by Parliament. Applying the tests laid down by this Court, it must be held that the proviso to sub-section (5) of Section 5 of the Medical University Act which was inserted by the State Act requiring prior permission of the State Government for establishing a college are repugnant to Section 10-A inserted in the Indian Medical Council Act, 1956 by the Central Act which prescribes the conditions for establishing a new medical college in the country. The said repugnancy is, however, confined to the field covered by Section 10-A, viz., establishment of a new medical college and would not extend to establishment of other colleges."

23. In AIR 1999 SC 1167 (V.Sudeer vs. Bar Council of India), the Supreme Court was concerned with the question as to whether the Rule framed by the Bar Council of India imposing a pre-enrolment training for qualified Degree-holders in Law was valid. While dealing with the said situation, the Supreme Court has stated the parameters within which the Bar Council of India can exercise its Rule-making power as provided under Section 49(1)(ag) of the Advocates Act, in the following words in paragraph 23:

"23. .... The rule making power under Section 49(1)(ag) has to take colour from the statutory function entrusted to the Bar Council of India by Section 24(3)(d). As we have already held that Section 24(3)(d) does not enable the Bar Council of India to impose additional restriction on the eligibility of an applicant who seeks enrolment as per Section 24(1) by necessary implication power under Section 49(1)(ag) also cannot enable such an impermissible exercise. The rule making power under Section 49(1)(ag) is ancillary to the statutory function entrusted to the Bar Council of India by Section 24(3)(d) and it cannot travel beyond the said statutory sphere."

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24. In AIR 1968 SC 888 (O.N.Mohindroo vs. Bar Council of Delhi and others), the Constitution Bench of the Supreme Court has held that the Advocates Act would fall within Entries 77 and 78 of List-I of Seventh Schedule and that the same would not fall under Entry 26 of List-III.

25. In AIR 2001 SC 2861 (Bharathidasan University vs. All India Council for Technical Education), the Supreme Court dealt with the question whether the Bharathidasan University created under the Bharathidasan University Act, is subject to the Regulations framed by the All India Council for Technical Education (for short, AICTE), which stipulated that a technical institution should seek prior approval of AICTE to start an institution for imparting a course or programme in technical education or a technical institution adjunct to the University itself, to conduct technical courses of its choice and selection. Dealing with the said issue, the Supreme Court has held that the Regulation insofar as it compels the University to seek for and obtain prior approval and not to start any Law Department or course or programme in technical education and empower itself to withdraw such an approval in a given case of contravention of Regulations, is directly opposed to and inconsistent with the provisions of Section 10(1)(k) of the AICTE Act and consequently void and unenforceable. As regards the efficacy of such a Regulation, the Supreme Court has stated the legal position as under in paragraph 14:

> "14. The fact that the regulations may have the force of law or when made have to be laid down before the legislature concerned do not confer any more sanctity or immunity as though they are statutory provisions themselves. Consequently, when the power to make regulations is confined to certain limits and made to flow in a well-defined canal within stipulated banks, those actually made or shown and found to be not made within its confines but outside them, the courts are bound to ignore them when the question of their enforcement arise and the mere fact that there was no specific relief sought for to strike down or declare them ultra vires, particularly when the party in sufferance is a respondent to the lis or proceedings cannot confer any further sanctity or authority and validity which it is shown and found to obviously and patently lack. It would, therefore, be a myth to state that Regulations made under Section 23 of the Act have "constitutional" and legal status, even unmindful of the fact that anyone or more of them are found to be not consistent with specific provisions of the Act itself. Thus, the Regulations in question, which the AICTE could not have made so as to bind universities/UGC within the confines of the powers conferred upon it, cannot be enforced against or bind a university in the matter of any necessity to seek prior approval to commence a new department or course and programme in technical education in any university or any

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of its departments and constituent institutions."

26. In AIR 2002 Karnataka 108 (Shiva Shankara S. vs. Karnataka State Bar Council, Bangalore), a Division Bench of the Karnataka High Court dealt with the question whether the claim made by the petitioners who have successfully completed "Five-year LL.B course" in the University Law College, Bangalore, run by the "Bangalore University", can be denied enrolment by the State Bar Council of Karnataka on the ground that the University Law College, Bangalore failed to apply to the BCI for approval/recognition of its Five-year course under the amended Rule 17 of Section A Part IV of the BCI Rules. Dealing with the said question, the Division Bench of the Karnataka High Court has held as under in paragraphs 9.2 and 9.3:

> "9.2. The University Law College run by the Bangalore University being the Department of Law of the University, does not require any "affiliation" to the University. What Rule 17 requires is that the affiliation obtained by a College should be approved by the Bar Council of India. The term College and affiliation are not defined either in the Act or the Rules. Section 53 of the Karnataka State Universities Act, 1976 relates to affiliation of Colleges and provides that Colleges within the University area may be affiliated to the University as 'affiliated Colleges' on satisfying the conditions specified in the Section. The term 'affiliation' of a College with reference to a University means an independent College being associated with the University and thereby having the benefits of the University. The term 'affiliation' always refers to a separate legal entity (College) being affiliated to the University. Thus Rule 2(1)(b) and Rule 17(1) requires recognition/approval of affiliation by the Bar Council in regard to only colleges which require affiliation to a University. If the University itself is running an institution imparting legal education, such institution would not require affiliation as such institution is a part of the University itself and is not a separate entity. Such institution also does not require recognition as the University itself has been recognised. If an institution does not require affiliation at all, the question of such affiliation being approved by BCI does not arise.
>
> 9.3. The power of inspection for purposes of approval or disapproval contemplated under Rules 17 and 18 of the Rules are therefore with reference to a College which requires affiliation and not in regard to a Department of the University itself. Neither Rule 2 nor Rule 17 nor any other Rule requires the University to seek or obtain approval/recognition of its Institution (University Law College) or its course of study, from BCI."

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27. In 2005 (2) CTC 182 (Bharathidasan University vs. Dhanalakshmi Srinivasan Educational and Charitable Trust), a Division Bench of our High Court has comprehensively stated the implication of a Central Act enacted in exercise of its power contained in Entry 66 of List-I vis-a-vis the scope and extent of application of a State enactment passed in pursuance of Entry 25 of List-III of Seventh Schedule, on the same subject, after conscisely stating the legal principles set out by the Supreme Court in the decisions reported in 1995 (4) SCC 104 (Adhiyaman College of Engineering case), 1996 (3) SCC 15 (Thirumuruga Kriupananda Variyar Thavathiru Sundaraswamigal Medical Educational and Charitable Trust vs. State of Tamil Nadu) and 2000 (5) SCC 231 = 2000 (3) CTC 165 (SC) (Jaya Gokul Educational Trust vs. Commissioner and Secretary to Government, Higher Education Department), in the following words in paragraph 18:

> "18. Now we shall consider the power to legislate on the subject of education. Previously the said power was provided in Entry 11 of List II of Schedule VII of Constitution of India. By virtue of 42nd Amendment of the Constitution which was given effect to from 3.1.1977, the subject of education has been classified as follows:
>
> "Union List-List I-Entry 66
> Co-ordination and determination of standards in institutions for higher education or Research and Scientific and technical institutions.
> Concurrent List-List III-Entry 25
> Education including technical education, medical education and Universities, subject to the provisions of Entries 63, 64, 65 and 66 of list 1; Vocational and technical training of labour."
>
> From the above said re-classification of the legislative source of power on the subject of education, it is seen that the Union of India is competent to enact laws relating to higher education, technical institutions etc. The Supreme Court of India in interpreting the said Entries, has categorically held that there can be no State enactment repugnant to the law enacted by the Parliament and that the provisions contained in any of the State enactment such as Tamil Nadu Private Colleges Act, Madras University Act, etc. which are inconsistent to the provisions contained in any of the Central Acts such as AICTE Act, MCI Act, Dentist Act, etc., are ultra vires to that extent of repugnancy. Useful reliance was also placed on the same judgments in Adhiyaman college case; Thirumuruga Kirupananda Variar's case; and Jaya Gokul's case which are in the following effect:
>
> (1) Adhiyaman College case, 1995 (4) SCC 104:
>
> In this decision it has been

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categorically held that neither the State Government nor the University have got power to enact law on the subject falls under Entry 66 of List I and that the existing law to the extent of inconsistent with the provisions made in the AICTE Act is ultra vires and unenforceable.

(2) Thirumuruga Kirubananda Variyar's case, 1996 (3) SCC 15:

In this decision the Supreme Court has held that prior permission of State Government to start a new Medical College is invalid on the ground of repugnancy. It is further held that Section 5(5) of the Medical University Act enacted by the State Act is held as repugnant to Section 10-A of Indian Medical Council Act.

(3) Jaya Gokul Educational Trust case, 2000 (3) CTC 165 : 2000 (5) SCC 231:

By re-capitulating the dictum laid down in Adhiyaman's case, the Supreme Court specifically ruled that the University cannot impose conditions for affiliation in contravention of the provisions contained in the Central Act, viz. AICTE Act. Thus, the position of law and the validity of existing law of the State Enactments have been made crystal clear in the above stated judgments of the Supreme Court."

28. In the decision reported in 2006 (3) M.L.J. 1037 (State of Tamil Nadu vs. V.S.B. Educational Trust), a Division Bench of our High Court has summed up the statement of law as declared by the Supreme Court as regards the conflict between a Central Legislation and a State Legislation, to the following effect in paragraph 19:

"19. Coming to the two decisions of the Hon'ble Supreme Court viz. Government of A.P. v. J.B. Educational Society (2005 (3) SCC 212) and State of Maharashtra v. S.D.S.S. Mahavidyalaya (2006 (3) SCALE 675 : JT 2006 (4) SC 201), it has to be borne in mind that Their Lordships of the Apex Court are unanimous on the point that when there is a conflict between the Parliament and State Legislature and such conflict between the two enactments being irreconcilable, the parliamentary legislation would prevail notwithstanding the exclusive power of the State Legislature to make a law with respect to a matter enumerated in the State List. In that background, we gave our heedful attention to the

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issue before us. We see that Government of A.P. v. J.B. Educational Society was decided by Their Lordships of the Supreme Court on 23.2.2005, and that, at the time of deciding the said issue, Notification of the AICTE to the effect that NOC from the concerned State Government is not necessary, was not at all there, as it came into existence only on 28.11.2005 i.e., nearly 10 months after the pronouncement of the Judgment in the above case. Hence, by applying the latest decision rendered by a three Judges Bench of the Apex Court in State of Maharashtra v. S.D.S.S. Mahavidyalaya case, we hold that once recognition has been granted by the AICTE, the University is obliged to grant affiliation to the institutes concerned."

29. In 2005 (5) SCC 420 (Prof.Yashpal vs. State of Chhattisgarh), the Supreme Court has emphasised the significance and primacy of the UGC Act by virtue of the said enactment being made by the Parliament under Entry 66 of List-I of Seventh Schedule of the Constitution of India, in paragraphs 33, 38 and 46, as under:

"33. The consistent and settled view of this Court, therefore, is that in spite of incorporation of universities as a legislative head being in the State List, the whole gamut of the university which will include teaching, quality of education being imparted, curriculum, standard of examination and evaluation and also research activity being carried on will not come within the purview of the State Legislature on account of a specific entry on coordination and determination of standards in institutions for higher education or research and scientific and technical education being in the Union List for which Parliament alone is competent. It is the responsibility of Parliament to ensure that proper standards are maintained in institutions for higher education or research throughout the country and also uniformity in standards is maintained."

"38. A degree conferred by a university is a proof of the fact that a person has studied a course of a particular higher level and has successfully passed the examination certifying his proficiency in the said subject of study to such level. In the case of a doctorate degree, it certifies that the holder of the degree has attained a high level of knowledge and study in the subject concerned by doing some original research work. A university degree confers a kind of status upon a person like a graduate or a postgraduate. Those who have done research work and have obtained a PhD, DLitt or DSc degree become entitled to write the word "Doctor" before their names and command certain amount of respect

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in society as educated and knowledgeable persons. That apart, the principal advantage of holding a university degree is in the matter of employment, where a minimum qualification like a graduate, postgraduate or a professional degree from a recognised institute is prescribed. Even for those who do not want to take up a job and want to remain in a private profession like a doctor or lawyer, registration with the Medical Council or the Bar Council is necessary for which purpose a degree in medicine or law, as the case may be, from an institution recognised by the said bodies is essential. An academic degree is, therefore, of great significance and value for the holder thereof and goes a long way in shaping his future. The interest of society also requires that the holder of an academic degree must possess the requisite proficiency and expertise in the subject which the degree certifies."

"46. Entry 66 which deals with coordination and determination of standard in institutions for higher education or research and scientific and technical institutions is in the Union List and Parliament alone has the legislative competence to legislate on the said topic. The University Grants Commission Act has been made with reference to Entry 66 (see Prem Chand Jain v. R.K. Chhabra, 1984 (2) SCC 302 : 1984 SCC (Cri) 233: (1984) 2 SCR 883) and Osmania University Teachers' Assn. v. State of A.P., 1987 (4) SCC 671). The Act has been enacted to ensure that there is coordination and determination of standards in universities, which are institutions of higher learning, by a body created by the Central Government. It is the duty and responsibility of the University Grants Commission, which is established by Section 4 of the UGC Act, to determine and coordinate the standard of teaching curriculum and also level of examination in various universities in the country. In order to achieve the aforesaid objectives, the role of UGC comes at the threshold. The course of study, its nature and volume, has to be ascertained and determined before the commencement of academic session. Proper standard of teaching cannot be achieved unless there are adequate infrastructural facilities in the campus like classrooms, libraries, laboratories, well-equipped teaching staff of requisite calibre and a proper student-teacher ratio. For this purpose, the Central Government has made a number of rules in exercise of powers conferred by Section 25 of the UGC Act and the Commission has also made regulations in exercise of power conferred by Section 26 of the

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> UGC Act and to mention a few, the UGC Inspection of Universities Rules, 1960, the UGC Regulations, 1985 Regarding the Minimum Standards of Instructions for the Grant of the First Degree, UGC Regulations, 1991 Regarding Minimum Qualifications for Appointment of Teachers in Universities and Colleges, etc. UGC with the approval of the Central Government and exercising power under Section 22(3) of the UGC Act has issued a schedule of degrees which may be awarded by the universities. The impugned Act which enables a proposal on paper only to be notified as a university and thereby conferring the power upon such university under Section 22 of the UGC Act to confer degrees has the effect of completely stultifying the functioning of the University Grants Commission insofar as these universities are concerned. Such incorporation of a university makes it impossible for UGC to perform its duties and responsibilities of ensuring coordination and determination of standards. In the absence of any campus and other infrastructural facilities, UGC cannot take any measures whatsoever to ensure a proper syllabus, level of teaching, standard of examination and evaluation of academic achievement of the students or even to ensure that the students have undergone the course of study for the prescribed period before the degree is awarded to them."

30. In the decision reported in 2007 (2) SCC 202 (Bar Council of India vs. Board of Management, Dayanand College of Law), the Supreme Court made it clear that the Advocates Act falls under Entries 77 and 78 of List-I of Seventh Schedule of the Constitution of India.

31. In the decision reported in 2004 (11) SCC 755 (Bharati Vidyapeeth vs. State of Maharashtra), the competence of the State Legislature to make a Law under Entry 25 of List-III of the Constitution of India in respect of a matter which is covered by Entry 66 of List-I of Seventh Schedule, came up for consideration. The Supreme Court considered the respective contentions of the parties, namely "Deemed University" and the "State". On behalf of the Deemed University, it was contended that when once the institution comes under the umbrella of "Deemed University", it was no longer open for the State to exercise its power under Entry 25 of List-III of, inasmuch as the same are the powers exercised by the UGC under the UGC Act, which has been enacted in terms of Entry 66 of List-I of Seventh Schedule of the Constitution of India. It was then contended that the State's competence in regard to a Deemed University with respect to the higher education is completely excluded and a University established under the Central enactment falls outside the scope of Entry 25 of List-III and that the Union Law will prevail over the State Law to the extent of overlapping. On behalf of the State, it was however contended that even if a "Deemed University" is

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governed by the UGC, there were still certain facets with reference to which the appropriate Legislation can be made within the scope of Entry 25 of List-III of the Constitution of India. It was pointed out that the grant of status of "Deemed University" on the institution was only for the purpose of the UGC Act and that the State Government had sufficient powers to impose necessary Rules upon a "Deemed University". While repelling the above contentions raised on behalf of the State, the Supreme Court, by making a specific reference to the expressions contained in Entry 66 of List-I of Seventh Schedule of the Constitution of India and the earlier decision of the Supreme Court reported in AIR 1963 SC 703 = 1963 Supp. (1) SCR 112 (Gujarat University vs. Krisha Ranganath Mudholkar), stated that the expression "coordination" used in Entry 66 of List-I of Seventh Schedule to the Constitution of India, does not merely mean the evaluation, that it means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. The Supreme Court went on to hold that it would include the power to do all things which are necessary to prevent what would make "coordination" either impossible or difficult. By making a specific reference to Section 3 of the UGC Act, the Supreme Court held as under in paragraph 18:

> "18. Under Section 3 of the Act, deemed university status will be given to those institutions that for historical reasons for for any other circumstances are not universities and yet are doing work for a high standard in specialised academic field compared to a university and that granting of a university status would enable them to further contribute to the course of higher education which would mutually enrich the institution and the university system. .... "

Again in paragraph 21, the Supreme Court has stated that, ".. The university or the State Government has no role to play either in the matter of recognition, affiliation or making any financial grants to exercise powers either as condition thereto or in exercise of Entry 25 of List-II. ... ". Thereafter, the Supreme Court made a detailed reference to the other provisions of the UGC Act and referred to one other contention raised on behalf of the State that the UGC Act is only for the purpose of making grants to various institutions and rejected the said contention in the following words in paragraph 24:

> "24. Learned counsel appearing for the State very strenuously urged that the UGC Act is only for the purpose of making grants to various institutions governed by it and it was not an authority which would create a university and give a special status to it so as to keep it out of the control of the university or the State where it is located. This argument ignores the provisions of the enactment and particularly those to which we have adverted to just now, for such institutions are recognised or granted deemed status for the maintenance of the standards in the institutions and for coordinating the teaching in universities which is a higher purpose than merely giving grants and

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with that object, the enactment is made. We do not think it could be confined only to making of grants as has been contended by the respondents. This argument, therefore, needs to be rejected."

32. In the decision reported in 2005 (3) SCC 212 (Govt. of A.P. vs. J.B. Educational Society), the Supreme Court reiterated the supremacy of the Law made by the Union Legislature in the event of an overlapping of the Law made by the Parliament with respect to a matter enumerated in List-I and the Law made by the State Legislature with respect to the matter enumerated in List-III of Seventh Schedule. As regards the question of repugnancy between the Parliament Legislature and the State Legislature, the Supreme Court has stated the legal position as under in paragraph 12:

"12. Thus, the question of repugnancy between the parliamentary legislation and the State legislation can arise in two ways. First, where the legislations, though enacted with respect to matters in their allotted sphere, overlap and conflict. Second, where the two legislations are with respect to matters in the Concurrent List and there is a conflict. In both the situations, parliamentary legislation will predominate, in the first, by virtue of the non obstante clause in Article 246(1), in the second, by reason of Article 254(1). Clause (2) of Article 254 deals with a situation where the State legislation having been reserved and having obtained President's assent, prevails in that State; this again is subject to the proviso that Parliament can again bring a legislation to override even such State legislation."

33. In the decision of the Supreme Court reported in 2006 (3) Scale 675 (State of Maharashtra vs. S.D.S.S. Mahavidyala), the Supreme Court once again emphasised the supremacy of the Legislative power of the Parliament vis-a-vis the competence of the State in the context of Entry 66 of List-I of Schedule VII as well as Entry 25 of List-III of the Constitution of India and has stated the legal position as under in paragraphs 61 and 62:

"61. From the above decisions, in our judgment, the law appears to be very well settled. So far as co-ordination and determination of standards in institutions for higher education or research, scientific and technical institutions are concerned, the subject is exclusively covered by Entry 66 of List I of Schedule VII to the Constitution and State has no power to encroach upon the legislative power of Parliament. It is only when the subject is covered by Entry 25 of List III of Schedule VII to the Constitution that there is a concurrent power of Parliament as well as State Legislatures and appropriate Act can be by the State Legislature subject to limitations and restrictions under the Constitution.

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> 62. In the instant case, admittedly, Parliament has enacted 1993 Act, which is in force. The Preamble of the Act provides for establishment of National Council for Teacher Education (NCTE) with a view to achieving planned and coordinated development of the teacher-education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher-education system and for matters connected therewith. With a view to achieving that object, National Council for Teacher Education has been established at four places by the Central Government. It is thus clear that the field is fully and completely occupied by an Act of Parliament and covered by Entry 66 of List I of Schedule VII. It is, therefore, not open to the State Legislature to encroach upon the said field. Parliament alone could have exercised the power by making appropriate law. In the circumstances, it is not open to State Government to refuse permission relying on a State Act or on 'policy consideration'."

34. A reference to the above decisions brings-forth the following principles:

(i) The intention of the Legislature has to be gathered by reading the Statute as a whole.

(ii) A State Act in respect of an Entry covered by Entry 66 of List-I (Union List) of Seventh Schedule of the Constitution of India, would be beyond the Legislative competence of the State Legislature and as such, the same would be void and inoperative.

(iii) Any existing law to the extent of inconsistency with the provisions of a law made by the Parliament under Entry 66 of List-I (Union List) of Seventh Schedule to the Constitution of India, would be ultra-vires and unenforceable.

(iv) The UGC Act is made with reference to Entry 66 of List-I (Union List) of Seventh Schedule to the Constitution of India, to ensure co-ordination and determination of standards in Universities which are institutions of higher learning.

(v) By virtue of Section 22 of the UGC Act, among other Universities, a "Deemed University" is also competent to confer or grant Degrees to its students.

(vi) A declaration made under Section 3 of the UGC Act declaring an institution as "Deemed University" would come into effect instantaneously and nothing more is required to be done after such declaration.

(vii) If the institution which was once affiliated with a University is declared as a "Deemed University" under Section 3 of the UGC Act, such a declaration would instantaneously result in dis-affiliation from the University with which it was originally affiliated.

(viii) When an Act of Parliament or a State Legislature provides that something should be 'deemed' to exist, the Court is bound to ascertain the purpose for which the fiction was created and give full effect to the intention of the Legislature and carry out the purpose

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to its logical conclusion.

(ix) The Advocates Act falls within Entries 77 and 78 of List-I (Union List) of Seventh Schedule to the Constitution of India, and not under Entry 25 of List-III (Concurrent List) of Seventh Schedule.

(x) If the University itself runs an institution imparting legal education, such institution would not require affiliation, since, such institution is a part of the University itself and is not a separate entity and such institution also does not require any recognition, as the University itself has been recognised.

(xi) When there is a conflict between the law made by the Parliament and the State Legislature and such conflict being irreconcilable, the Parliamentary Legislation would prevail, notwithstanding the exclusive power of the State Legislature to make a law with respect to a matter enumerated in the State List.

(xii) In respect of a "Deemed University", any other University or the State Government has no role to pay either in the matter of recognition, affiliation or making any financial grants to exercise power either as a condition thereto or in exercise of Entry 25 of List-III Concurrent List of Seventh Schedule to the Constitution of India.

(xiii) Insofar as co-ordination and determination of standards in institutions for higher education or research, scientific and technical institutions, are concerned, the subject is exclusively covered by Entry 66 of List-I (Union List) of Seventh Schedule to the Constitution of India, and the State has no power to encroach upon the Legislative competence of the Parliament.

35. Having regard to our conclusions on the implications of Rule 18(2) of Part IV Section A of the amended BCI Rules read along with Sections 5(v) and 6 of Dr.Ambedkar Law University Act, 1996, as well as various provisions of the UGC Act, in particular, Sections 3 and 22 and also by applying the principles set out in the various decisions culled out by us in the previous paragraph of this judgment, to the case on hand, we are satisfied that neither Section 5(v) nor Section 6 of Tamil Nadu Dr.Ambedkar Law University Act, 1996 can over-ride the provisions as contained in Sections 3 and 22 of the UGC Act (a Central Legislation). As SASTRA and SAVEETHA are admittedly the Deemed Universities, the application of Section 5(v) of Dr.Ambedkar Law University is out of question. Similarly, Section 6(1) of Dr.Ambedkar Law University Act will not also apply, inasmuch the said institutions, namely SASTRA and SAVEETHA cannot be held to be a mere Law College or institution imparting legal education de-hors the University status acquired by these Deemed Universities under the provisions of the Central Act. Therefore, there is no question of any statutory compulsion as provided under Section 6(1) of Dr.Ambedkar Law University Act, to seek for its Affiliation like an ordinary Law College or any other institution imparting legal education. Section 6(2) of Dr.Ambedkar Law University Act will also not apply to these Deemed Universities, inasmuch as it talks of a Law College or institution imparting legal education affiliated with any other University whether within the State of Tamil Nadu or outside the State of Tamil Nadu.

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36. It is by now well settled that "Deemed University", though for all other purposes to be 'deemed' to be a 'University' as defined

under Section 2(f) of the UGC Act, it has no power of Affiliation of any other institution. In fact, the Division Bench of the Karnataka High Court in the decision reported in AIR 2002 Karnataka 108 (cited supra) went to the extent of stating that even under Rules 17 and 18 of the amended BCI Rules, the law course started by a "Deemed University" as part of its Department, need not even seek or obtain approval/recognition of its institution (University Law College in that case) from the BCI, inasmuch as such institution is part of the University itself and not a separate entity. The Division Bench of the Karnataka High Court construed the term "Affiliation" only to a separate legal entity (College) being affiliated to the University with reference to whom alone the question of approval of the Affiliation of such College with any University would arise.

37. We are of the considered opinion that the ratio-decidendi in the said decision of the Division Bench of the Karnataka High Court in stating that the Department of a University to impart legal education cannot be construed as a College or a separate institution which requires an Affiliation with any other University fully applies to the facts of this case. If it were to be held that such an Affiliation would still be required in respect of a course to be started by a University as part of its Department that would be highly incongruous and such a proposition can never be legally stated or declared.

38. Therefore, what is contemplated in Section 6(2) of Dr.Ambedkar Law University Act is only with reference to an independent Law College or institution imparting legal education, affiliated with any other University, whether within the State of Tamil Nadu or outside the State of Tamil Nadu, if requires the recognition of Dr.Ambedkar Law University, for any purpose, then and then alone the approval of the University concerned with whom such a Law College or an institution is affiliated and that of the Government, would be required.

39. To cite an instance, if a student studying in a Law College affiliated with any University whether within the State of Tamil Nadu or outside the State of Tamil Nadu, wishes to get himself transferred to continue his Law course in any one of the Law Colleges affiliated with Dr.Ambedkar Law University, may fall within the expression "any purpose" in Section 6(2) of Dr.Ambedkar Law University Act, for which, requirements stipulated in Section 6(2) may have to be complied with. We are only citing one such instance and there may be numerous other instances which may fall within the expression "any purpose" referred to under Section 6(2) for which recognition of Dr.Ambedkar Law University may be needed and in those circumstances and in respect of such Law Colleges and institutions if affiliated with any other University either within the State or outside the State, when they seek for recognition of Dr.Ambedkar Law University, the compliance of Section 6(2) of Dr.Ambedkar Law University Act may arise. Certainly, such a situation will never be applicable to a "University" itself, as the stipulations contained in Section 6(2) of Dr.Ambedkar Law University Act, by no stretch of imagination, can be stated to be referable to a "University" and a Law course to be commenced in such an University.

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40. Irrespective of our above view on the implication of Section 6(2) of Dr.Ambedkar Law University Act, 1996 on its own, when the application of the said provision, in the light of the provisions contained under the UGC Act is examined, it will have to be stated that by virtue of the settled legal position, namely that the UGC Act (a Central Legislation) will prevail over Tamil Nadu Dr.Ambedkar Law University Act, 1996 and since SASTRA and SAVEETHA being "Deemed Universities" as declared under the provisions of Section 3 of the UGC Act, those Universities are not bound to follow the provisions of Dr.Ambedkar Law University Act. In other words, neither Section 5(v) nor Section 6 of Dr.Ambedkar Law University Act will apply to SASTRA and SAVEETHA "Deemed Universities" by virtue of the position that they are governed exclusively by the provisions of the UGC Act.

41. When we examine the correctness of the conclusions of the learned single Judge in the impugned orders, the conclusions have been stated as under by the learned Judge in paragraph 13 of the impugned order dated 21.3.2006 in W.P.No.24928 of 2005, and we fully concur with the proposition of law as stated by the learned Judge in the following words:

> "13. Learned counsel for the BCI has referred to Section 6 of the Law University Act, which reads as under:-
>
> > "6(1) No Law college or institution imparting legal education within the University area shall be affiliated to any other University other than the Tamil Nadu Dr.Ambedkar Law University.
> >
> > (2) No Law college or institution imparting legal education affiliated to, or associated with, or maintained by, any other University, whether within the State of Tamil Nadu or outside the State of Tamil nadu, shall be recognised by the University for any purpose except with the prior approval of the Government and the University concerned."
>
> Sub-section (1) of Section 6 requires that no law college or institution imparting legal education within the University area shall be affiliated to any other University other than the Tamil Nadu Dr.Ambedkar Law University. The said section applies to a law college or institution and not the University as such or the Deemed University for that matter. In terms of sub-section (2) of Section 6, no law college or institution imparting legal education affiliated

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to, or associated with, or maintained by, any other University, whether within the State of Tamil Nadu or outside the State of Tamil nadu, shall be recognised by the University for any purpose except with the prior approval of the Government and the University concerned. This section also applies only to a law college or institution imparting legal education affiliated to or associated with or maintained by any other University other than Tamil Nadu Dr.Ambedkar Law University whether within the State of Tamil Nadu or outside the State of Tamil Nadu shall be recognised by the University for any purpose except with the prior approval of the Government and the University concerned. This section also does not apply to the University as such or the Deemed University and consequently mandates the approval of affiliation from the University and consequently for the purpose of approval from the State Government. In this regard, it must be kept in mind that when once an institution is declared to be a Deemed University, its activities must be regulated only under the provisions of the UGC Act. In view of the such provisions under the UGC Act, the Legislature thought it fit not to include the Universities or the Deemed Universities to be affiliated to the Tamil Nadu Dr.Ambedkar Law University and therefore, they have excluded the application of Section 6 relating to the affiliation to the Tamil Nadu Dr.Ambedkar Law University by the Universities or Deemed Universities. The submission of the learned counsel for the BCI as to the application of Section 6 to the Deemed University as well is only liable to be rejected. When the provisions of the Act are interpreted, the plain and literal meaning alone should be preferred and if such interpretation is adopted, the submission of the learned Senior Counsel for the Deemed University in regard to the non-application of the said section to the Deemed University must be accepted. It is not out of place to mention that even the Tamil Nadu Dr.Ambedkar Law University Act does not either provide or insist an affiliation by the University or Deemed University and the BCI cannot even insist for recognition on a Deemed University for the purpose of approval. Hence the submission of the learned counsel for the BCI in this regard is rejected.

42. With this, when we come to the question of the requirement of approval to be granted by the appellant-BCI in respect of Law course to be started by the Deemed Universities – SASTRA and SAVEETHA, there can be no two opinions that such approval of the appellant-BCI is mandatorily required under the provisions of the Advocates Act. In

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this context, it will be useful to refer to the decision of the Supreme Court reported in 2007 (2) SCC 202 (cited supra). The Supreme Court, after elaborately referring to the various decisions of itself and the provisions of law, in particular, Section 7(1)(h), 7(1)(i), 24,, 49(1)(af) and (d) read along with Rules 12 and 17 in Part IV, Section A of the amended BCI Rules, held as under in paragraphs 10, 11 and 14:

> "10. The Bar Council of India Rules are framed by the Bar Council of India in exercise of its rule-making power. Part IV thereof deals with legal education, the duration of it, the syllabi, etc. Section A deals with five-year law course and Section B deals with three-year law course. Under Section A Rule 2, a degree in law obtained from a university shall not be recognised for the purpose of enrolment as an advocate under the Advocates Act unless the conditions laid down therein are fulfilled. Only then a student coming out of that university could get enrolled as an advocate. Provision has also been made regarding teachers of law. Rule 12 reads:
>
> > "12. Full-time teachers of law including the Principal of the college shall ordinarily be holders of a Master's degree in law and where the holders of Master's degree in law are not available, persons with teaching experience for a minimum period of 10 years in law may be considered. Part-time teachers other than one with a LLM degree shall have a minimum practice of five years at the Bar." "
>
> 11. Rule 17(1) stipulates that no college after the coming into force of the Rules shall impart instruction in a course of study in law for enrolment as an advocate unless its affiliation has been approved by the Bar Council of India. Thus, though the Bar Council of India may not have been entrusted with direct control of legal education in the sense in which the same is entrusted to a university, still, the Bar Council of India retains adequate power to control the course of studies in law, the power of inspection, the power of recognition of degrees and the power to deny enrolment to law degree-holders, unless the university from which they pass out is recognised by the Bar Council of India."
>
> "14. ..... Therefore, even while adhering to its process of selection of Principal, it behoves the State to ensure that the appointment it makes is also consistent with the Advocates Act and the Rules framed by the Bar Council of India. It may not be correct to say that the Bar Council of India is totally unconcerned with the legal education, though primarily legal education may

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also be within the province of the universities. But, as the apex professional body, the Bar Council of India is concerned with the standards of legal profession and the equipment of those who seek entry into that profession. The Bar Council of India is also thus concerned with the legal education in the country. Therefore, instead of taking a pedantic view of the situation, the State Government and the recommending authority are expected to ensure that the requirement set down by the Bar Council of India is also complied with. .... "

43. Therefore, in view of the said authoritative pronouncement of the Supreme Court on the predominant role played by the Bar Council of India in the matter of legal education, it will have to be held that the approval of "Affiliation" of a Law course is mandatorily required under Rules 17 and 18 of Part IV, Section A of the amended BCI Rules, as otherwise, mere securing of a Law degree without enabling such a degree-holder to get himself enrolled as an Advocate in the Rolls of the BCI, will not serve the purpose. Moreover, by virtue of the provisions contained in the Advocates Act and the entrustment of ensuring proper legal education, by monitoring the various institutions imparting such legal education with the BCI, it is imperative that such approval of Affiliation to be granted by the BCI as stipulated in the provisions of the Advocates Act read along with the amended BCI Rules, is bound to be complied with.

44. In the above context, we consider the submission of Mr.N.G.R.Prasad, appearing for the impleaded third respondent in W.A.No.933 of 2006, namely the S F I, in stating that only Law Colleges run by the Government institutions alone would be able to maintain the standards of education with minimal cost and the same cannot be accepted. The said submission of the learned counsel is directly met by the Supreme Court in the decision reported in 1995 AIR SCW 3701 (cited supra) and paragraph 16 of the said decision is relevant for our present purpose, which reads as under:

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"16. .... Legal aid is required in many forms and at various stages, for obtaining guidance, for resolving disputes in Courts, tribunals or other authorities. It has manifold facets. The explosion in population, the vast changes brought about by scientific, technological and other developments, and the all round enlarged field of human activity reflected in modern society, and the consequent increase in litigation in Courts and other forums demand that the service of competent persons with expertise in law is required in many stages and at different forums or levels and should be made available. The need for a continuing and well organised legal education, is absolutely essential reckoning the new trends

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in the world order, to meet the ever growing challenges. The legal education should be able to meet the ever growing demands of the society and should be thoroughly equipped to cater to the complexities of the different situations. Specialisation in different branches of the law is necessary. The requirement is of such a great dimension, that sizeable or vast number of dedicated persons should be properly trained in different branches of law, every year by providing or rendering competent and proper legal education. This is possible only if adequate number of law colleges with proper infrastructure including expertise law teachers and staff are established to deal with the situation in an appropriate manner. It cannot admit of doubt that, of late, there is a fall in the standard of legal education. The area of 'deficiency' should be located and correctives should be effected with the co-operation of competent persons before the matter gets beyond control. Needless to say that reputed and competent academics should be taken into confidence and their services availed of, to set right mattes. As in this case, a sole Government law college cannot cater to the needs of legal education or requirement in a city like Bombay. Lack of sufficient colleges called for the establishment of private law colleges. If the State is unable to start colleges of its own, it is only appropriate that private law colleges, which are duly recognised by the concerned University and/or the Bar Council of India and/or other appropriate authorities, as the case may be, should be afforded reasonable facilities to function effectively and in a meaningful manner. That requires substantial funds. Under the label of self financing institutions the colleges should not be permitted to hike the fees to any extent in order to meet the expenses to provide the infrastructure and for appointing competent teachers and staff. The private law colleges, on their own, may not afford to incur the huge cost required in that behalf. The 'standard' of legal education and discipline is bound to suffer. It should not so happen for want of funds. The 'quality' should on no account suffer in providing free legal aid and if it is not so, the free legal aid will only be a farce or make believe or illusory or a meaningless ritual. That should not be. It is in that direction the grant-in-aid by the State will facilitate and ensure the recognised private law colleges to function effectively and in a meaningful manner and turn out sufficient number of well trained or properly equipped law graduates in all branches year after year. That will in turn enable the State and other

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> authorities to provide free legal aid and ensure that opportunities for securing Justice are not denied to any citizen on account of any disability. These aspects necessarily flowing from Articles 21 and 39A of the Constitution were totally lost sight of by the Government when it denied the grant-in-aid to the recognised private law colleges as was afforded to other faculties. We would add that the State has abdicated the duty enjoined on it by the relevant provisions of the Constitution aforesaid. In this perspective, we hold that Article 21 read with Article 39A of the Constitution mandates or castes a duty on the State to afford grant-in-aid to recognised private law colleges, similar to other faculties, which qualify for the receipt of the grant. The aforesaid duty cast on the State cannot be whittled down in any manner, either by pleading paucity of funds or otherwise. We make this position clear."

Therefore, we are unable to countenance such an argument put forth on behalf of the S F I (impleaded third respondent in W.A.933 of 2006), though we hold that the BCI, by virtue of the provisions contained in the Advocates Act and the amended BCI Rules, is fully competent and invested with necessary powers to ensure that the required infrastructure facilities, faculty to impart legal education and other ancillary requirements to maintain the standard of legal education, can always be insisted upon by scrupulously following the stipulations contained in the Act and the Rules while considering any application for approval of Affiliation made by the Deemed Universities – SASTRA and SAVEETHA and before granting such approval of Affiliation.

45. On the above aspect, we also do not find or visualise any conflict between the provisions of the UGC Act and the Advocates Act read along with the amended BCI Rules. In fact, a harmonious construction of both the enactments would ensure complete protection for the candidates who wish to undergo a Law course in the "Deemed Universities" by virtue of supervision and control to be exercised both by the UGC under the provisions of the UGC Act and the BCI under the provisions of the Advocates Act and the amended BCI Rules. Therefore, even on this ground, it can be safely held that the apprehensions voiced on behalf of the impleaded third respondent-S F I in W.A.No.933 of 2006, are fully taken care of.

46. In view of our above conclusions, we do not find any merit in both these Writ Appeals. Both the Writ Appeals fail and the same are dismissed. No costs. The impugned orders of the learned single Judge are confirmed. The appellant-BCI is directed to consider the application of the Deemed Universities --- SASTRA and SAVEETHA (first respondent in the respective Writ Appeals) for approval of Affiliation to B.A.,LL.B (five years-integrated) and LL.B (three year) Law courses, without insisting on a recognition by the Tamil Nadu Dr.Ambedkar Law University or the NOC from the State Government. It is however held that the appellant-BCI is entitled to consider the

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request for approval of Affiliation on the basis of the inspection report, as held by the learned single Judge. The Miscellaneous Petitions are closed.

JUDGMENT

S. TAMILVANAN, J:

47. I had the advantage of reading the Judgment rendered by my Most Respected Brother, Hon'ble Mr.Justice F.M.IBRAHIM KALIFULLA. With utmost respect to the learned Judge, as I am not in a position to agree with the Judgment of my brother Judge, I prefer to differ and write my own Judgment.

48. The Bar Council of India, represented by its Secretary has preferred both the writ appeals, aggrieved by the orders of the learned single Judge, dated 20.04.2006 made in W.P.No.10231 of 2006 and dated 21.03.2006 made in W.P.No.24928 of 2005. W.A.No.929 of 2006 has been preferred against the order passed in W.P.No.10231 of 2006. W.A.No.933 of 2006 has been preferred against the order passed in W.P.No.24928 of 2005.

49. The Saveetha Institute of Medical and Technical Sciences, a Deemed University (in short SAVEETHA), being the writ petitioner in W.P.No.10231 of 2006 has challenged the order of the Bar Council of India, dated 24.02.2006 passed in BCI:D:197:2006 (LE/Afflin.), seeking an order to quash the same and to direct the appellant to accept and consider the application of the first respondent, dated 14.12.2005, and also seeking approval for starting a law course to impart five year Law Course viz., B.A., LL.B. (Hons) from the academic year 2006-07, without reference to no objection from the State Government.

50. The Shanmuga Arts, Science, Technology and Research Academy, (in short SASTRA), by notification, dated 15.06.2001 with effect from 26.04.2001, came in to existence as Deemed University. It is not in dispute that originally SASTRA was established in the year 1984 and was being administered by one Balaseva Educational and Charitable Trust and the college was affiliated to Bharathidasan University and the same was also approved by the All India Council for Technical Education. The college was offering courses like B.E., Civil, Technical, Electrical, Electronics &Communication, B.E., Information Technology, Information Technology & Management, M.E., and M.C.A., and subsequently as Deemed University, SASTRA made an application on 23.04.2002 to the Bar Council of India (herein after referred to as "BCI") for approval of affiliation for the B.A., LL.B (5 years integrated) and LL.B (3 years) courses under Section 7 (1) (i) of the Advocates Act, 1961. The Bar Council of India, by its order, dated 01.07.2005, rejected the request of the Deemed University, stating that the institution was not allowed to run the law course, without complying with the relevant rules of the Bar Council of India. Aggrieved by which, SASTRA, filed the writ petition, seeking to issue a writ of certiorarified mandamus to call for the records, relating to the order, dated 01.07.2005 passed by the BCI, the appellant herein to quash the same and direct the appellant to grant approval

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of the Degree B.A., LL.B.,(5 years integrated course) and LL.B., (3 years course) by SASTRA.

51. In the impugned order, dated 20.04.2006, passed in W.P.No.10231 of 2006 (relating to SAVEETHA), the learned single Judge has held as follows :

> "The issue raised in this writ petition is squarely covered by my earlier order made in W.P.No.24928 of 2005, dated 21.03.2006, wherein I have held that the Bar Council has no power to insist the institution to obtain NOC before granting permission to start a law college. The petitioner is also one of the deemed universities in the state of Tamil Nadu, who has applied for such permission to the Bar Council and by the impugned order, dated 24.02.2006, the request of the petitioner has been rejected on the ground that the petitioner has not produced the permission / NOC from the State Government. As the petitioner is entitled to the very same benefit of the earlier order, the writ petition is allowed and the impugned order is set aside and there will be a direction to the respondent to accept and consider the application of the petitioner, dated 14.12.2005 for starting Law College to impart five year law course, viz., B.A., LL.B., (Hons) from the academic year 2006-07 with an annual intake of 320 students, without reference to NOC from the State Government and accordingly, the writ petition was allowed."

52. It has been made clear that the order, dated 20.04.2006 is covered by the earlier order made in W.P.No.24928 of 2005, dated 21.03.2006. Aggrieved by the said order, W.A.No.933 of 2006 has been preferred. In the said impugned order, dated 21.03.2006 made in W.P.No.24928 of 2005 (relating to SASTRA), it has been held by the learned single Judge that once an institution is declared as a deemed university, its activities would be regulated only under the provisions of UGC Act and in view of such provisions under the UGC Act, the legislature thought it fit not to include the universities or Deemed Universities to be affiliated to the Tamil Nadu Dr.Ambedkar Law University and therefore, they have excluded the application of Section 6 relating to the affiliation to the Tamil Nadu Dr.Ambedkar Law University.

53. The learned single Judge has held further, at paragraph number 14 of the order as follows :

> "14. So far as the submission of the learned counsel for BCI that when the Deemed University status was conferred on SASTRA, it was only offering Arts, Science and Technology courses and that it did not apply to the Law courses, it is to be seen that when once the University is declared as Deemed University, it shall apply to all courses existing or to be introduced, of

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course, with the approval of the University. Merely because at the time when the university was declared as Deemed University, it did not offer law courses and does not take away its right to impart legal education through its deemed university status…"

With the above finding, the contentions raised by the learned counsel appearing for the Bar Council of India was negatived. It has been held in para number 15 as under :

" If the regulations relating to the maintenance of standards in education, admission of students and appointment of teachers are occupied by the Central enactment, the provisions of the Law University Act are not applicable to a Deemed University in the matters relating to conduct of classes, conduct of examination and conferment of degrees and in the absence of any provisions under the Advocates Act or the rules any regulations framed there under for such insistence, I do not find any justification in the impugned order insisting the Deemed University to obtain No Objection Certificate from the State Government."

54. Mr.K.Venkatakrishnan, learned counsel appearing for the appellant, Bar Council of India (BCI) in both the writ appeals, assailing the orders of the learned single Judge, after referring to Rules 16, 17 and 18 of Part IV, Section A of the amended BCI Rules, Section 2(a), (p) and (q), 5 (v) of the Tamil Nadu Dr.Ambedkar Law University Act, Section 3 of the UGC Act and Sections 7 (h) and (i) and 49 (af) and (d) of the Advocates Act, 1961, strenuously contended that by virtue of the above provisions, the BCI is empowered to insist for the No Objection Certificate (NOC) from the State Government and also recognition letter from Dr.Ambedkar Law University, in order to consider for granting approval of affiliation by Bar Council of India.

55. It is not in dispute that BCI is the competent authority, as per Section 49 (1) of the Advocates Act, 1961, to frame rules for discharging its function under the Act. As per Section 7 (1) (h) of the said Act, Bar Council of India (BCI) has to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education.

56. As per Section 7 (1) (i) of the Advocates Act, Bar Council of India is vested with the power to recognize Universities whose degree in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect Universities or cause the State Bar Councils to visit and inspect Universities in accordance with such directions as it may give in this behalf. Therefore, it is not in dispute that BCI is empowered to frame rules in order to promote legal education and to lay down standards of such education and accordingly, the Bar Council of India has framed Rules under the Advocates Act, 1961.

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57. Advocates Act, Section 49 (1) (af) and (d) reads as follows :

> Section 49 : General power of the Bar Council of India to make rules :-
>
> (1) The Bar Council of India may make rules for discharging its functions under this Act and, in particular, such rules may prescribe -
>
> (af) the minimum qualifications required for admission to a course of a degree in law in any recognized university.
>
> (d) the standards of legal education to be observed by Universities in India and the inspection of Universities for that purpose."

58. Mr.K.Venkatakrishnan, learned counsel appearing for the appellant, BCI, in both the writ appeals mainly contended that as per the amended Rule 18 (2) of Part IV, Section A of the amended BCI Rules, as per stipulation therein, for grant of approval of affiliation, permission / no objection for establishment of law college should be obtained from the Government or Higher Education Department of the State, under the prevailing law or any other order in the state and therefore, the first respondent in both the writ appeals cannot give a go-bye to Rule 18 (2) of the BCI Rules and the Advocates Act.

59. The amended Rule 18 (2) of Section A in Part IV of Bar Council of India Rules reads as under :

> "Every law college, University, Deemed University and Department of law of any University and applying for approval of affiliation shall obtain permission / no objection for establishment of law college from Government or Higher Education Department of the State, if the same is a requirement under the prevailing law or any order in the State."

60. As per Rule 17 (1) of the BCI Rules, it is very clear that no college, after the coming into force of the Bar Council of India Rules, shall impart instruction in a course of study in law for enrolment as an advocate, unless its affiliation has been approved by the Bar Council of India. As per Rule 17 (2), even an existing law college shall not be competent to impart instruction in a course of study in law for enrolment as an advocate, if the continuance of its affiliation is disapproved by the Bar Council of India. On the above grounds, the learned counsel pleaded for allowing the writ appeals and to set aside the impugned orders.

61. According to Mr. G.Rajagopal, learned Senior Counsel appearing for SASTRA, the first respondent in W.A.No. 933 of 2006, Rule 17 and 18 (2) of Bar Council of India Rules are applicable only for colleges imparting legal education, and the same is not applicable for any University or Deemed University. Prior to the amendment, as per Rule 18 (2), every law college applying for

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approval of affiliation shall obtain permission / no objection for establishment of law college from the Government or Higher Education Department of the State, if the same is a requirement under the prevailing law or any order in the State.

62. Mr.R.Muthukumarasamy, learned Senior Counsel appearing for SAVEETHA, the first respondent in W.A.No.929 of 2006 would also contend that Rules 17 (1) (2) and 18 (2) are not applicable for the deemed universities. According to the learned Senior Counsel, the above rules are applicable only for the law colleges to impart legal education, since as per Section 22 of the UGC Act, no affiliation is required for a university or deemed university. Mr.R.Muthukumarasamy, learned Senior Counsel strongly argued that as per Section 22 of the UGC Act, the deemed university is empowered to confer degrees, for which no permission or NOC is required from the State Government.

63. According to the learned Senior Counsel appearing for both the Deemed Universities, Section 6 (1) and (2) of Tamil Nadu Dr.Ambedkar Law University Act, 1996 is not applicable to SAVEETHA and SASTRA, since they are deemed universities. The learned counsel contended that Section 25 of the UGC Act empowers the Central Government to make Rules to carry out the purposes of the Act. Sub-clause (2) (e), (f) and (g) of Section 25 of the UGC Act empowers the Central Government to frame rules as regards the additional functions to be performed by the UGC under Clause (j) of Section 12 of the UGC Act. According to the learned Senior Counsel, Section 6 (1) and (2) of Tamil Nadu Dr.Ambedkar Law University Act, has no relevance, as far so University or Deemed University is concerned, since they require no affiliation from any other University.

64. No doubt, a conjoint reading of Section 2(f), 3, 12 to 19, 22, 25, 26 and 28 of the UGC Act shows that the functioning of the Deemed University is under the direct supervision and control of the UGC, which in turn is controlled by the Central Government, by virtue of the formulation of the Rules to be framed under the UGC Act.

65. It is not in dispute that as per Section 22 of the UGC Act, any University or Deemed University is competent to confer any degree and as contended by Mr.R.Muthukumarasamy, the learned Senior Counsel, the declaration made under sub-section 3 of Section 22 of the UGC Act, empowers any University or Deemed University to confer degrees and Section 22 of UGC Act reads as under :

> Section 22 : Right to confer degrees :
> (1) The right of conferring or granting degree shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University under Section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees.
> (2) Save as provided in sub-section (1), no person or authority shall confer, or grant, or hold himself or itself out as entitled to confer or grant, any degree.
> (3) For the purposes of this section, "degree"

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means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette."

So far as conferring academic degree is concerned, as contemplated under Section 22 of the UGC Act, a University or Deemed University can confer degrees.

66. I am of the view that the legal question involved in the writ appeals is different, which is in fact, with reference to the competency of the authority of BCI and scope of Rule 16, 17, 18 (2) of BCI Rules and Sections 49 (1) and 7 (1) (h) and (i) of Advocates Act, with regard to legal education.

67. Rule 16 of BCI reads as follows :
" A law college affiliated to a university shall by June 1, 1987 be an independent Law College and shall cease to be a department attached to a college. "

68. As contemplated under Rule 17 (1), No college after the BCI Rules, coming into force, shall impart instruction in a course of study in law for enrolment as an advocate unless its affiliation has been approved by the Bar Council of India. Though, a university or deemed university is empowered or having right under Section 22 of the UGC Act, 1956, to confer any academic degree, but for the purpose of enrolment as an advocate, unless its affiliation has been approved by the BCI, neither any University, nor a Deemed University or Law College is empowered to confer the required law degree, whether it is B.A., LL.B (Hons) (5 years integrated course) or LL.B., (3 years course), for which Rule 17 of BCI Rules is very clear. As per Rule 17 (2) of BCI Rules, even an existing law college shall not be competent to impart instruction in a course of study in law for enrolment as an advocate, if the continuance of its affiliation is disapproved by the Bar Council of India.

69. As per the amended rule of BCI, which came into effect in November 2000, the word "Every College" has been substituted, so as to make it applicable to University, Deemed University and Department of Law of any University and therefore, I am of the considered view that the arguments advanced by the learned Senior Counsel that Rules 17 (1) (2) and 18 (2) are not applicable for the Deemed Universities cannot be accepted.

70. The learned Senior Advocates appearing for the Deemed Universities, in support of their contention, cited various decisions. But, after carefully considering the decisions referred to, I am of the view that the decisions would not support the case of the Deemed Universities, in challenging the rules of BCI in their writ petitions.

71. As per the decision, V.Sudeer vs. Bar Council of India, reported in AIR 1999 SC 1167, the Hon'ble Supreme Court has held that "Once a person is enrolled as an advocate, how the right to practise of such enrolled advocate be regulated or monitored may legitimately from the subject matter of a rule framed under S.49 (1) (ah). But the impugned rules by providing the concept of a trainee advocate with

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only a limited right to ask for adjournment and mentioning the cases of his guide totally violate the scheme of the Act. S.17, sub-sec (2) of the Act lays down that there can be only two classes of advocates; senior advocates and non-senior or ordinary advocates. It is difficult to appreciate how a trainee advocate's class can be created by expressing supposed rule making power of the Bar Council of India under S.49 (1) (ah)." As per this decision, the Hon'ble Apex Court, has ruled that as per Section 17 (2) of the Act, there are only two categories of advocates, namely, senior advocates and non-senior or ordinary advocates and that the BCI cannot create a third category, by way of introducing a new cadre, called trainee advocates. The above referred decision is not applicable for the facts and circumstances of this writ appeals, since the Bar Council of India is empowered under Section 49 (1) to make rules, so as to maintain the standards of legal education and as per Section 7 (h) of the said Act, BCI has such a right, in order to promote legal education and to lay down standard of such education, in consultation with the universities in India, imparting such legal education.

72. In T.K.V.T.S.S. Medical Educational & Charitable Trust vs. State of T.N, reported in AIR 1996 SC 2384, it has been held that Section 5(5) of State Act, namely, The T.N. Dr.M.G.R. Medical University Act, is repugnant to Section 10 (A) of the Central Act, since granting permission for establishment of medical college, as per Central Act is within the purview of the aforesaid Central Act. Here, admittedly, there is no conflict between the Central Law and the State Law. In fact, the first respondent in both the writ appeals, namely the Deemed Universities have not challenged any state law, especially Section 6 (1) and (2) of Tamil Nadu Dr.Ambedkar Law University Act, by impleading the state Government as a party to the writ petitions. Therefore, the aforesaid decision is not applicable for the facts and circumstances of the writ petitions and writ appeals.

73. In the decision, State of Tamil Nadu vs. V.S.B. Educational Trust, reported in 2006 (3) MLJ 1037, the Division Bench of this Court, has held that the aforesaid trust was running Engineering colleges, after getting proper approval from All India Council for Technical Education (in short AICTE), and hence, proviso to Section 5 (ac) of the Anna University Act would not be applicable. It has been held in the Judgment as follows :

> " 21. In the light of the above discussion, legal position and notification of the AICTE, dated 28.11.2005, we hold that proviso to, Section 5 (ac) of the Anna University Act, 1978 would not apply to an institution covered by AICTE Act, 1987…"

As per the above decision, once recognition is granted by AICTE, the University is obliged to grant affiliation to such institution and proviso to Section 5 (ac) of the said Act, does not apply to such cases. In the instance case, no such approval has been obtained from the BCI, the competent authority, as per Advocates Act and there is no plea against any order passed by any University, including Tamil Nadu Dr.Ambedkar Law University. Therefore, the aforesaid decision is also not in favour of the deemed universities, in these writ appeals.

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74. In the decision, Osmania University Teachers' Assn. Vs. State of A.P. reported in 1987 (4) SCC 671, the Hon'ble Supreme Court has held that Preamble, Sections 3, 4, 8, 11, 13 to 16, 18 and 19 of Andhra Pradesh Commissionerate of Higher Education Act, 1986, as unconstitutional, since the same was beyond the legislative competence of State of Legislature, under Schedule VII List III Entry 25 as it encroaches into the legislative field of Parliament, under List I Entry 66 and contains provisions parallel to U.G.C. Act, 1956. But, in the instant case, the said Act, namely, the Tamil Nadu Dr.Ambedkar Law University Act is not under challenge, before the learned single Judge or before this Division Bench. The Deemed Universities have challenged only the amended Rule 18 (2), which stipulates every law college, university, deemed university and department of law of any university, applying for approval of affiliation shall obtain permission / no objection from State Government or Higher Education Department of the State, if the same is a requirement under the prevailing law or any order in the State. It is seen that no direction is sought for against the Government towards getting No Objection Certificate (NOC) and even, the Government is not a party in the writ petitions.

75. As discussed earlier, it is not in dispute that the BCI is empowered to frame rules, in view of Section 49 (1) of the Advocates Act. Rule 17 (1) of BCI Rules framed, as per Section 49 (1) read with Section 7 (1) (h) and (i) of the Advocates Act, clearly stipulates that " No college after the coming into force of these Rules shall impart instruction in a course of study in law for enrolment as an advocate unless its affiliation has been approved by the Bar Council of India." As per the amended Rule 18 (2), BCI Rules, "Every law college, University, Deemed University and Department of law of any University and applying for approval of affiliation shall obtain permission / no objection for establishment of law college from Government or Higher Education Department of the State, if the same is a requirement under the prevailing law or any order in the State." A conjoint reading of Rule 17 (1) and the amended Rule 18 (2) of BCI Rules, would clearly show that the mandatory requirement of NOC is a pre-requisite, for any College, University, Deemed University or even Department of Law of any University and accordingly, the deemed universities and other institutions for the purpose of getting approval of affiliation from BCI have necessarily to obtain no objection from the State Government, which is no way repugnant to any Central Act. Rule 17 (1) clearly stipulates that no college after the coming into force of BCI Rules shall impart instruction in a course of study in law for enrolment as an advocate unless its affiliation has been approved by the BCI. The above rule is no way repugnant to UGC Act, since the aforesaid requirement is needed only for making a degree recognized for the purpose of enrolment as an Advocate and as such, the same is within the purview of the power and authority of Bar Council of India. In other words, the aforesaid rule of BCI is not a bar against any university or deemed university in granting any degree, under Section 22 of the UGC Act, other than imparting instruction in a course of study in law for the purpose of enrolment as an Advocate. I am of the considered view that such power is vested with the BCI, which is no way illegal or against any Central Law. It is in fact strange that the deemed universities (SASTRA and SAVEETHA)

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have not even approached the State Government, pursuant to Rule 18 (2) of the amended rules of BCI for getting no objection. As the deemed universities intend to impart legal education, that would be recognised by the BCI, for the purpose of enrolment as Advocate, the compliance of the rules of the BCI is mandatory.

76. During the course of argument, Mr.N.G.R. Prasad, learned counsel appearing for the Students Federation of India (SFI) drew the attention of this Court to the inspection report of SASTRA, available in the typed set, where a list of high officials with their educational qualification, experience and designation has been given. As per the list, the designation of Dean – Legal Studies is one Mr.K.Subramanian, said to have possessed only a Bachelor Degree in Law. Likewise, in Sl.No.3, one Sri.K.Sampath Kumar, stated as Senior Lecturer is possessing only B.G.L., so far as legal educational qualification is concerned. It is not in dispute that B.G.L., is not even a recognized degree for enrolment as an Advocate. The contention of the learned counsel, that if the deemed university, SASTRA, Arts, Science, Technology and Research and SAVEETHA, Institute of Medical and Technical Sciences are permitted to start legal education, so as to impart instruction in the course of study in law for the purpose of enrolment as an advocate, violating the mandatory provisions of the BCI, even without getting no objection from the State Government, it would defeat the very object of Section 7 (h) and (i) of the Advocates Act and also detrimental to the legal profession. I am of the considered view that the apprehension raised by the learned counsel for SFI cannot be ruled out on the aforesaid facts and circumstances.

77. The Hon'ble Supreme Court in the decision Shivaji University vs. Bharti Vidyapeeth, reported in AIR 1999 SC 1762, has held as follows :

> " 12. In the instant case, we are in no doubt that the appellant was in error in refusing to accord permission to the first respondent to start the said law college only because a law college already existed at Sangli…"

In the aforesaid case, Shivaji University, the appellant therein had refused to accord permission, on the ground of already existing law college at a place Sangli. In the instance case, no such approval from the BCI has been obtained to impart instruction in law for enrolment as an Advocate and further, no order of the University is under challenge in the writ appeals. Therefore, I am of the view that the aforesaid decision is no way applicable to the facts and circumstances of the present case.

78. In the decision Prof. Yashpal vs. State of Chattisgarh, reported in 2005 (5) SCC 420, the Full Bench of the Hon'ble Apex Court has held that the University having no infrastructure or teaching facility and being in a position to confer degrees could create complete chaos in the matter of co-ordination and maintenance of standards in higher education, which would be highly detrimental for the whole nation. It has been further held that "The State Legislature can make an enactment providing for incorporation of

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universities under Entry 32 of List II and also enactments generally for universities under Entry 25 of List III. However, the UGC Act has been made with reference to List I Entry 66. Entry 66 of List I deals with co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions. There can thus be a clash between the powers of the State and that of the Union. Items 63 to 66 of List I are carved out of the subject of education and in respect of these items the power to legislate is vested exclusively in Parliament. The use of the expression "subject to" in List III Entry 25 of the Seventh Schedule clearly indicates that the legislation in respect of excluded matters cannot be undertaken by the State Legislatures. It is the exclusive responsibility of the Central Government to determine the standards for higher education and the same should not be lowered at the hands of any particular State as it is of great importance to national progress."

79. In the instant case, by virtue of Section 7 (1) (h) and (i) and Section 49 (1) (d) of the Advocates Act, the BCI, has framed rules. As per the Rules, 16, 17 (1) and 18 (2) of the said Rules, getting no objection from the Government or Higher Education Department of the State under the prevailing law or any order in the state is a mandatory requirement. The above said rule is no way against the Advocates Act or any other Central law, so as to construe the same as illegal. It is quite clear that as per the amended rule 18 (2), Every law college, University, Deemed University and Department of law of any University for getting approval from BCI, should obtain No Objection Certificate. In view of the Bar Council rules framed as per the Advocates Act, I am of the considered view that it is mandatory on the part of the University or Deemed University or Law College for getting No Objection Certificate from the Government, as per the prevailing law or order of the State. As Deemed Universities intend to impart legal education and confer degree as a required qualification for enrolment as Advocate, it is mandatory and a pre-requisite for the writ petitioners "SAVEETHA" and "SASTRA" to obtain ' NOC ' as required under Rule 18 (2) of BCI Rules.

80. As contended by the learned counsel appearing for the Students Federation of India and Tamil Nadu Dr.Ambedkar Law University, the nomenclature of SAVEETHA, is Saveetha Institute of Medical and Technical Sciences. It is an admitted fact that the institution is imparting only Medical and Technical Education and not any legal education, recognized by BCI. Similarly, SASTRA, Shanmuga Arts, Science and Research Academy is also a deemed university imparting only the education in Arts, Science and Technology and not legal education, approved by BCI. As per the Advocates Act and the mandatory provisions of the BCI Rules, framed there under, the aforesaid deemed universities have to obtain permission / no objection from the Government, as per prevailing law or any order in the State, as required under the amended Rule 18 (2) of BCI Rules, for conferring law degree to be approved by BCI, for the purpose of enrolment as Advocate.

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81. As contended by Mr.V.M.G.Ramakannan, Sections 6 (1) and (2)

of Tamil Nadu Dr. Ambedkar Law University Act is not under challenge in the writ appeals and the State Government is also not a party to the same and therefore, there is no necessity to consider the validity of the aforesaid provisions of law in the writ appeals. Further, the amended Rule 18 (2) requires no objection from the State Government under the prevailing law or any order of the State. Considering the special feature of the BCI, under the Advocates Act and the BCI Rules framed thereunder, a similar provision under Tamil Nadu Dr.MGR University or Anna University cannot be cited as binding precedent to decide the validity of Section 6 (1) and (2) of Tamil Nadu Dr.Ambedkar Law University Act.

82. Therefore, I am of the considered view that the amended Rule 18 (2) of the BCI framed as per Section 49 (1) r/w Section 7 (1) (h) and (i) of the Advocates Act, the deemed universities are also required to produce No Objection Certificate from the State Government or Higher Education Department of the State, as per the prevailing law or order of state and the same was not complied with. Therefore, I am of the considered view that SAVEETHA and SASTRA, Deemed Universities have failed to establish their case, in order to quash the orders passed by the appellant by invoking Article 226 of the Constitution of India and hence, I hold that both the writ appeals have to be allowed and the impugned orders are to be set aside, in the light of various decisions rendered by the Hon'ble Apex Court.

83. In the result, both the writ appeals are allowed and the impugned orders passed by the learned single Judge are set aside. However, there is no order as to costs. Consequently, connected miscellaneous petitions are closed.

F.M.IBRAHIM KALIFULLA
AND
THE HONOURABLE MR.JUSTICE S.TAMILVANAN

In view of the differing verdict amongst us, we direct the Registry to place the above matters before my Lord, The Honourable The Chief Justice, for passing appropriate Orders.

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24.8.2007

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ORDER: In view of the different verdict and as per the order of the Honourable The Chief Justice the Writ Appeals having been posted before The Honourable Mrs.Justice Prabha Sridevan on Friday, the 16th day of November, 2007 for orders pursuant to the differing verdict of the Honourable Division Bench, comprising of The Honourable Mr.Justice F.M.Ibrahim Kalifulla and the Honourable Mr.Justice S.Tamilvanan, dated 24.8.2007 and made herein and in the presence of the aforesaid Advocates, the Court made the following Order:

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PRABHA SRIDEVAN,J.

When the 1st respondent/deemed university applied for permission to establish a Law College, the Bar Council of India rejected in view of Rule 18.

2. Two writ petitions were filed, each by the Deemed University. Both were allowed. Against that, two writ appeals were filed, and heard by the Division Bench consisting of F.M. Ibrahim Kalifulla, J. and S. Tamilvanan,J.. They differed in their views and therefore, this matter has been placed before me.

3. The learned Senior Counsel, Mr. R. Thiagarajan appearing for the Bar Council submitted that the power of the Bar Council of India is undisputed and without their permission no degree granted by any College will be of any use to any Advocate since without being enrolled by the Bar Council, no one will be entitled to practice. Neither of the respondents has challenged the relevant Rule and therefore, it is evident that they concede the rule making power of the Bar Council of India. It was submitted that there is no repugnancy nor inconsistency between the Tamil Nadu Ambedkar Law University Act(State Act in short) and The Advocates Act,1961, (Central Act in short) under which the Bar Council of India Rules are framed(Rules in short) and therefore, the issue whether the Central Act occupies the field totally or not, does not require to be answered. The Rule framed by the Bar Council in view of Section 7 of the Advocate Act itself insists upon permission from the State Govt before starting a new Law College, by reference to the State Act. Legislation by reference is one of the accepted modes of legislation and what is in the State Act has been made part of the Bar Council Rules.

4. The learned Senior Counsel referred to Section 7(1)(h) and Section 49 of the Advocates Act. According to him, the Rule is an example of legislation by reference. He submitted that the amended Rule 18(2) of the Bar Council Rules should be read in an harmonious manner and the words "approval of affiliation" should be ignored where university or deemed university is concerned. So according to the learned Senior Counsel the Rule should be read as it is where a Law College or a Dept of Law is concerned, but without the words where University or Deemed University is concerned. If read thus, there would be no difficulty. The permission or no objection from the State which is the requirement under the Dr. Ambedkar Law University Act is a condition, which must be satisfied by the Deemed University.

5. The learned Senior Counsel appearing for the respondents, Mr. G. Rajagopal and Mr. R. Muthukumarasamy submitted that it is not necessary for them to challenge the Rule since it does not apply to them. It was submitted that this is not a case of legislation by

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reference since in a case of legislation by reference the law which is referred to will be specified. In this case, the Rules merely say that if there is a law requiring such permission, then that condition must be satisfied. The provision in the State Act cannot apply to a Deemed University, which does not require affiliation and therefore, the respondents can justifiably pray for quashing of the impugned order without challenging the constitutionality of the Rule. The learned Senior Counsel submitted that the amended Rule was a clear indication of the abdication of power by the Bar Council of India to the State.

6. The learned counsel appearing for the Student Federation of India supported the case of the Bar Council.

7. The learned counsel appearing for the Dr. Ambedkar Law University submitted that Section 6(2) of the State Act applies to existing Universities and Universities which intend to start colleges and Section 7(1)(m) of the Central Act gives the Bar Council the power to make rules for discharging all the functions mentioned above in the said subsection. This includes Section 7(1)(h), which deals with the promotion of legal education in laying down the standards of education and it is for this purpose that they had laid down the condition.

8. The amended Rule which has given rise to the impugned order reads as follows:

> (2) Every Law College, University, Deemed University & Department of the law of any University and applying for approval of affiliation shall obtain permission/no objection (for establishment of law college) from Government or Higher Education Department of the State, if the same is a requirement under the prevailing law or any order in the State."

It is claimed that this is a referential legislation. The law relating to this is explained in U.P. Avas Evam Vikas Parishad V.Jainul Islam & Anr. (JT 1998 (1) SC 231), the Supreme Court held as follows:

> "A subsequent legislation often makes a reference to an earlier legislation so as to make the provisions of the earlier legislation applicable to matters covered by the later legislation. Such a legislation may either be (i) a referential legislation which merely contains a reference to or the citation of the provisions of the earlier statute; or (ii) a legislation by incorporation whereunder the provisions of the earlier legislation to which reference is made are incorporated into the later legislation by reference. If it is a referential legislation the provisions of the earlier legislation to which reference is made in the subsequent legislation would be applicable as it stands on the date of application of such earlier legislation to matters referred to in the subsequent legislation."

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9. The following judgment was relied on to show that the Rule had to be complied with, viz; N.C.T.E. V. Committee of Management (2006 (4) SCC 65),where, the Supreme Court held,

> "15. For the afore-mentioned purpose, it is not necessary for us to determine the question as to whether the provisions of the Regulations are imperative in character or not. There cannot, however, be any doubt or dispute that even if they are directory in nature, substantial compliance thereof was necessary. "

10. The respondents are Deemed Universities. The status of a Deemed University is described in Bharati Vidyapeeth V. State of Maharashtra (2004(11) SCC 755),

> "18. Under Section 3 of the Act, deemed University status will be given to those institutions that for historical reasons or for any other circumstances are not Universities and yet are doing work of a high standard in specialised academic field compared to a University and that granting of a University status would enable them to further contribute to the course of higher education which would mutually enrich the institution and the University system. Guidelines for considering proposals for declaring an institution as deemed to be University were also issued by the UGC. Under the said guidelines aspects relating to admission was specifically entrusted with the UGC and admission could be made only through a common entrance test on All-India basis. Such an exercise was intended to maintain a uniform standard and level of excellence. As we have pointed out, admission plays a crucial role in maintaining of the high quality of education. And for the proper maintenance of academic excellence, as intended by the UGC Act, admissions to deemed University has to be made under the control of UGC. This further goes to show that admission procedure to a deemed to be University Is fully occupied by Entry 66 of List I and the State cannot exercise any powers over admission procedure.
>
> 19. Therefore, the State could not have enacted any legislation in that regard. If that is so, neither in exercise of executive power under Article 162 of the Constitution which extends only to the extent of legislative power nor in respect of power arising under the Maharashtra State Universities Act, such rules could have been prescribed. To the extent the High Court holds to the contrary, we set aside the order of the High Court."

And further held,

> "It would not be appropriate for the State to contend that even though the institution has now attained the deemed university status it is not beyond the clutches of the State in the matter of admissions of the students to such colleges as before granting of the deemed university status, the

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State was indeed consulted and the State conveyed its strong recommendation for grant of such status. Particularly when such status has been granted after consulting the Government concerned, we do not think that such argument on the basis of local needs should be accepted."

11. In Govt. of A.P. V. J.B. Educational Society ((2005) (3) SCC 212), the Supreme Court held,

"12. Thus, the question of repugnancy between the Parliamentary legislation and the State legislation can arise in two ways. First, where the legislations, though enacted with respect to matters in their allotted sphere, overlap and conflict. Second, where the two legislations are with respect to matters in Concurrent List and there is a conflict. In both the situations, Parliamentary legislation will predominate, in the first, by virtue of the non-obstante clause in Article 246(1), in the second, by reason of Article 245(1). Clause (2) of Article 245 deals with a situation where the State legislation having been reserved and having obtained President's ascent prevails in that State; this again is subject to the proviso that the Parliament can again bring a legislation to override even such State legislation."

12. To counter this contention regarding the position of deemed universities vis-a-vis the State,Mr. N.G.R.Prasad referred to the following paragraph from Sathyabama Institute of Science and Technology V. Union of India & 2 others(2006 (3) LW 499).

"Therefore, the role of the AICTE vis-à-vis the Universities has been spelt out specifically. The decision in the above case applies undoubtedly to deemed to be universities. The AICTE is not a silent spectator nor a passive player. It will act in co-ordination with the UGC, as we will see in our answer to the next question, in order to achieve the objects for which it was set up "

He submitted that on an analogous view this case will have to be decided, and the Bar Council nor the State can be a silent spectator.

The role of the Bar Council has been explained in several decisions. In O.N. Mohindroo V. Bar Council, Delhi, (AIR 1968 SC 888) the Supreme Court held,

"9. The Advocates Act was passed to amend and consolidate the law relating to legal practitioners and to provide for the constitution of Bar Councils and an All-India Bar. ...

10. The object of the Act is thus to constitute one common Bar for the whole country and to provide machinery for its regulated functioning. Since the Act sets up one Bar, autonomous in its character, the Bar Councils set up thereunder have been entrusted with the power to regulate the working of the profession and to prescribe rules of

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professional conduct and etiquette, and the power to punish those who commit breach of such rules. "

13. It was contended on behalf of the appellants and those supporting the appellants that therefore, the Bar Council of India has the power to impose conditions for establishment of a new Law College. Sections 7 and 49 of the Advocates Act, 1961 reads thus:

"7. Functions of Bar Council of India.

[1][(1)] The functions of the Bar Council of India shall be-

(h) to promote legal education and to lay down standards of such education in consultation with the universities in India imparting such education and the State Bar Councils;"

"49. General power of the Bar Council of India to make rules.

[1][(1)] The Bar Council of India may make rules for discharging its functions under this Act and particular, such rules may prescribe.]

[2][(a) the conditions subject to which an advocate may he entitled to vote at an election to the State Bar Council, including the qualifications or disqualifications of voters, and the matter in which an electoral roll of voters may be prepared and revised by a State Bar Council;

(ab) Qualifications for membership of a Bar Council and the disqualifications for such membership;

(ac) the time within which and the manner in which effect may be given to the proviso to sub-section (2) of Section 3;

(ad) The manner in which the name of any advocate may be prevented from being entered in more than one State roll;
(ae) The manner in which the seniority among advocates may be determined;

[3][(af) The minimum qualifications required for admission to a course of degree in law in any recognised University;]

(ag) The class or category of persons entitled to be enrolled as advocates;

(ah) The conditions subject to which an advocate shall have the right to practise and the circumstances under which a person shall be deemed to practise as an advocate in a

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court;]

(b) The form in which an application shall be made for the transfer of the names of advocates from one State roll to another;

(c) The standards of professional conduct and etiquette to be observed by advocates;

(d) The standards of legal education to be observed by university in India and the inspection of Universities for that purpose;

(e) The foreign qualifications in law obtained by person other than citizens of India, which shall be recognised for the purpose of admission as an advocate under this Act;

(f) The procedure to be followed by the disciplinary committee of State Bar Council and by its own disciplinary committee;

(g) The restrictions in the matter of practice to which senior advocates shall be subject;

[3][(gg) The form of dresses or robes to be worn by advocates, having regard to the climatic conditions, appearing before any court or tribunal];

(h) The fees, which may be levied in respect of any matter under this Act;

[2][(i) general principles for guidance of State Bar Councils and the manner in which directions issued or orders made by the Bar Councils of India may be enforced;]
(j) Any other matter, which may be prescribed:
[3][Provided that no rules made with reference to clause (c) or clause (gg) shall have effect unless they have approved by the Chief Justice of India]:
[4] [Provided further that] no rules made with reference to clause (e) shall have effect unless they have been approved by the Central Government.

[3][(2) Notwithstanding anything contained in the first proviso to sub-section (1), any Rule made with reference to clause (c) or clause (gg) of the said sub-section and in force immediately before commencement of the Advocates (Amendment) Act, 1973, shall continue in force until altered or amended in accordance with the provisions if this Act."

14. In Bar Council of India V. Board of Management, Dayanand College of Law 2007(2) SCC 202, the Supreme Court held thus:

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"12. It is clear from the decision of the Constitution

Bench in O.N. Mohindroo v. The Bar Council of Delhi and Ors. (supra) that in pith and substance, the Advocates Act falls under Entries 77 and 78 of List I of the Seventh Schedule. That apart, it is not necessary to postulate a conflict of legislation in this case as we have indicated earlier. It is true that under the University Act, the selection of a Principal of a College affiliated to the concerned University has been left to a Higher Education Services Commission and respondent No. 5 was included in the panel of selected candidates pursuant to a due selection by that Commission. It is also true that theoretically the State Government on the recommendation of the Director of Higher Education could appoint any one from that list as Principal of any College including a Law College. .... But, as the apex professional body, the Bar Council of India is concerned with the standards of the legal profession and the equipment of those who seek entry into that profession. The Bar Council of India is also thus concerned with the legal education in the country. Therefore, instead of taking a pedantic view of the situation, the State Government and the Recommending Authority are expected to ensure that the requirement set down by the Bar Council of India is also complied with. We are of the view that the High Court was not correct in its approach in postulating a conflict between the two laws and in resolving it based on Article 254(2) of the Constitution. Of course, the question whether the assent to the Act would also extend to the statute framed under it and that too to an amendment made subsequent to the assent are questions that do not call for an answer in this case in the light of the view we have adopted."

15. The constitutionality or the validity of the Act has not been challenged. Therefore we are really not concerned with the tests laid down for referential legislation. But it must be noted that the Rule makes no mention to any previous law or piece of legislation, it contents itself by saying "if same is a requirement under the prevailing law or any order in the State". The applicability of the Rule apart, it is a very unsatisfactory piece of drafting. It is not clear. The Rule makers appear to have used the "cut and paste" technique. This is the last thing that one expects of a Rule enacted by none other than the Bar Council. The meticulousness that had gone into statutes that have stood the test of time, has become old-fashioned and obsolete, it appears. Slipshod drafting is one of the negative fall-outs of mindless use of computers. This is, of course a remark en-passant, but one earnestly hopes that if the Bar Council is serious about improving the standards of legal education and the products that are churned out year after year it would spend a little more time and mind while drafting its Rules. According to the respondents, the rule does not apply. Originally, the Rule read thus:

(2) Every Law College applying for approval of affiliation shall obtain permission/no objection for establishment of law college from Government or Higher Education Department of the State, if the same is a

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requirement under the prevailing law or any order in the State."

Now the Rule reads thus:

(2) Every Law College, University, Deemed University & Department of the law of any University and applying for approval of affiliation shall obtain permission/no objection (for establishment of law college) from Government or Higher Education Department of the State, if the same is a requirement under the prevailing law or any order in the State."

The Rule can be divided into the four important parts.

(i) Every Law College, University, Deemed University and Department of Law of University.

(2) Applying for approval of affiliation.

(3) Shall obtain permission/ no objection for establishment of Law College.

(4) If the same is requirement under the prevailing law or any order in this State.

16. In the case of Saveetha Institute(W.A.No.929 of 2006), the Bar Council rejected their application for establishment of a new college since "it was not accompanied by (1) No Objection Certificate from the State Government and affiliation order from the University." and in the case of SASTRA,(W.A. No.933 of 2006)

"According to Section 6(2) of Tamil Nadu Dr. Ambedkar Law University Act, 1996 there is a clear requirement for all the institutions to have obtained permission/NOC from the State Govt.

In view of the above, this Committee feels that before granting any approval of affiliation, it is necessary for this institution to obtain NOC/permission from the State Govt. as the case may be."

17. The Rule making power of the Bar Council arises from Section 15 of the Advocates Act, Subsection 1 of the said Section begins with these words: "The Bar Council may make Rules to carry out the purposes of this Chapter". The words "this Chapter" refers to Section 15(2). This is wholly devoted to Bar Council. Section 7 deals with functions of Bar Council of India. Therefore, as per Sub-section 1 of Section 15, the Bar Council has the power to make Rules to carry out the purposes of the Chapter and specifically to provide for the purposes specified in Sub-section 2. The parties herein do not dispute the power of the Bar Council to enact Rules. Chapter 3 deals with admission of enrollment of Advocates. The Certificate of enrollment is issued under Section 22 in the prescribed form under

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State Bar Council to the person whose name is enrolled and the qualifications for admission of a person as a Advocate on a State Rule are set down in Section 24 of the Act. Section 24(1)(c) provides that in addition to the conditions mentioned in Section 24 (1)(a) to (c) the Advocate shall also fulfill such other conditions as may be specified in the Rules made by the State Bar Council.

18. Rule16 of the Bar Council Rules reads thus:

> "16. A law college affiliated to a University shall by June 1, 1987 be an independent law college and shall cease to be a
>
> department attached to a college.
>
> 17. (1) No college after the coming into force of these Rules shall impart instruction in a course of study in law for enrolment as an advocate unless its affiliation has been approved by the Bar Council of India.
>
> (2). An existing law college shall not be competent to impart instruction in a course of study in law for enrolment as an advocate if the continuance of its affiliation is disapproved by the Bar Council of India."

Rule 17 of the Bar Council Rules requires that after the coming into force of the Rules no college shall impart instruction unless its affiliation has been approved by the Bar Council of India. Rule 16 provides that the Law College affiliated to University will be an independent law college and will not be a department attached to a college. Rule 17(2) provides that existing law college cannot impart instruction if the continuance of its affiliation is disapproved by the Bar Council of India.

19. Neither of the respondents have challenged the constitutionality of the Act we need not go into the question of whether the Bar Council has the Rule making power. Indeed it would not be in the interest of the University to challenge the Bar Council's power, since if the Bar Council chooses not to recognize the degree offered by such Universities, then the persons who obtained the law from those Universities will not be enrolled and therefore, such degrees are of no use to the said persons. The appellants do not dispute the position that a Deemed University does not require affiliation. The appellants are therefore, conscious of the difficulties posed by language of the amended Rule and that is why Mr.R.Thiagarajan would submit that the words "applying for approval of affiliation" should be ignored where University and Deemed University are concerned and "read in"when it relates to law college and department of law of any University.

20. The guiding rule of interpretation is that the language of the Statute should be read as it is.

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(i) In State of Madhya Pradesh and another Vs. G.S. Dall & Flour Mills and Ors.(AIR 1991 SC 772), the Supreme Court held thus:

"It is well-established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. ...

Intention of the legislature is a common but very slippery phrase, which, popularly understood may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant, although there has been an omission to enact it. In a Court of Law or Equity, what the Legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication."

(ii) The Privy Council in Crawford v. Spooner, 6 Moo. P.C.C. 8.stated as follows;

"... We cannot aid the legislature's defective phrasing of the Act, we cannot add, and mend, and, by construction, make up deficiencies which are left there."

(iii) In Renula Bose (Smt.) V. Rai Manmathnath Bose (AIR 1945 Privy Council 108) reads thus:

" It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so..."

Logically, it is contrary to Rules of construction "to read words out of an Act" as the appellant want the Court to do.

(iv) In State of Kerala Vs. Mathai Verghese and Ors.(1986 (4) SCC 746), the Supreme Court held,

"the Court can merely interpret the section; it cannot re-write, recast or redesign the section. In interpreting the provision the exercise undertaken by the Court is to make explicit the intention of the legislature which enacted the legislation. In is not for the Court to reframe the legislation for the very good reason that the powers to 'legislate' have not been conferred on the Court."

In short, the court cannot reframe the legislation for the simple reason it has no power to legislate.

(v) At the same time in Inco Europe Ltd., V. First Choice Distribution (a firm)(2000 (2) All ER 109), it was held that in discharging its interpretative function, the court can correct obvious drafting errors and so in suitable cases "the court will add words, or omit words or substitute words."

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But "before interpreting a statute in this way the Court must be abundantly sure of three matters: (1) the

intended purpose of the statute or provision in question, (2) that by inadvertence the draftsman and Parliament failed to give effect to that purpose in the provision in question; and (3) the substance of the provision Parliament would have made, although not necessarily the precise words Parliament would have used, had the error in the Bill been noticed."

There are situations where addition of words is permissible and rejection of words. But these can be done only if the intention of the Legislature is clear and it is unskilled workmanship of the draftsman to introduce certain words in the Statute which has resulted in lack of clarity.

21. Let us see if the above three tests are satisfied.

Rule 18 reads as follows:

"18. The Bar Council of India shall cause a law college affiliated or sought to be affiliated to a University to be inspected by a Committee to be appointed by it for the purpose when:

a. An application for approval of affiliation of a new college is received by it or

It suo motu decides in order to ensure that the standards of Legal Education laid down by it are being complied with.

a. The application for approval of affiliation of a new college shall be addressed to the Secretary, Bar Council of India, and shall be sent only through the Registrar of the University concerned with his recommendations and the application be accompanied by an inspection fee of Rs. 50,000/-.

a. The College and/or the University concerned shall furnish all the information to the Committee of inspection and the Bar Council of India as and when required, and shall co-operate with them in every possible manner in the conduct of inspection.

d. (1) The Inspection team before recommending approval of affiliation to a new law college should, interalia, make a specific recommendation as to why such a law college is required at the same place/area where the law college is proposed to be started keeping in view the total number of existing Law Colleges in the place/area in particular and the state in general.

1. The inspection team will also keep in view the approximate population of the area where the College is proposed to be started, number of Law Colleges alongwith the total number of students

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therein, number of degree colleges as well as junior Colleges in the area in particular and the State in general.

e. If an unfavourable report is received, the Secretary of the Bar Council of India shall cause a copy of the same to be sent to the Registrar of the University concerned for his comments and explanations, if any. Such comments and explanations on the report shall be sent by the Registrar of the University within a period of six weeks from the date of the receipt of the communication.

f. The Secretary of the Bar Council of India shall cause the report and the comments/explanation of Registrar of the University concerned to be placed before the next meeting of the Legal Education Committee of the Bar Council of India.

(g) If the Legal Education Committee is satisfied that the standards of Legal Education and/or the rules for affiliation or continuance of affiliation provided for in these rules by the Bar Council of India are not complied with and/or that the courses of study, teaching and/or examination are not such as to secure to persons under-going legal education, the knowledge and training requisite for the competent practice of law, the Legal Education Committee shall recommend to the Bar Council of India, the approval/disapproval of affiliation or continuance of affiliation as the case may be.

The Legal Education Committee may also recommend that certain directions be given for improvements to be carried out within the period to be specified.

(h) This recommendation of the Legal Education Committee alongwith the accompanying papers shall be placed before the Bar Council of India for its decision. In case the Bar Council of India disagrees with or modifies the recommendation of the Legal Education Committee, it shall Communicate its views to the Legal Education Committee for its consideration before arriving at a final decision in the matter.

(i) If the Council is of the opinion that affiliation of a college whose affiliation has already been approved, be disapproved, the Council shall give notice of the proposed

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action to the Principal of the college and the Registrar of the University to show cause within 30 days of the receipt of the notice and the Council shall take into consideration, the reply received before making final orders.

(j) The decision of the Bar Council of India shall be communicated to the Registrar of the University.

- It shall be effective from the commencement of the next academic year following the date on which it is received by the Registrar of the University.

(k) University Law Department/Constituent and affiliated law colleges to which the Bar Council of India has already accorded Approval of affiliation shall submit to the Bar Council of India an annual return in the form prescribed (as per schedule IV) by the Bar Council of India at the end of its annual academic session failing which the approval of affiliation accorded shall be liable to be withdrawn/cancelled.

(1) After refusal to grant permission to start a law college or to extend approval of affiliation to any existing law college, no fresh application for the same purpose shall be entertained until the expiry of the next academic session or one calender year whichever is later from the date of such refusal by the Bar Council of India.

(2) Every law college, University, Deemed University & Department of law of any University and applying for approval of affiliation shall obtain permission / no objection for establishment of law college from Government of Higher Education Department of the State, if the same is a requirement under the prevailing law or any order in the State."

22. Rule 18 deals only with Law Colleges affiliated to a University. It does not refer to University, Deemed University or Department of Law anywhere else in the said Rule except in the Rule as amended. Even where Rule 18(c) refers to a University it is obviously the University to which the College is affiliated and not a University which seeks approval of affiliation. Therefore, Rule 18 is intended to govern an application made by the Law College for approval of affiliation. So intent is clear, and therefore, the words "approval of affiliation" cannot be deleted or "read out".

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23. We next come to the second test. Is it by inadvertence that

these words have been used? The purpose of the Rule itself is only with regard to Law Colleges which seek approval of affiliation, so the amended Rule will necessarily have to apply only in such cases. It is clear that the Legislature intended to lay down these Rules to govern application for approval of affiliation, therefore, the words "approval of affiliation" are meant to be there. To read the Rule so as to make it apply even when there is no application for approval of affiliation or whether there cannot be an application for approval, would do violence to all guiding principles of interpretation of statutes.

24. Now we come to the third step. What is the substance of the provision the Parliament would have made not necessarily in the precise words had the error been noticed. The appellant contends that this rule is intended to be used when application is made for permission to establish a Law College. When the entire Rule is intended only to govern application for approval of affiliation of Law College, we cannot add or omit the words "approval of affiliation" to make it apply to University or Deemed University."

25. The Rule merely provides that if there is a law which includes such a requirement namely obtaining the permission or no objection for establishment of Law College then the same should be obtained. The Tamil Nadu Ambedkar Law University Act, 1996 and it provides for,

> "Section 2(e) "College" means a college or institution established or maintained by or affiliated to the University and providing any course of study or training, in law for admission to the examination, for degrees, diplomas or other academic distinction of the University"
>
> Section 2(p) "University" means the Tamil Nadu Dr. Ambedkar Law University.
>
> Powers and functions of University:
>
> Section 5(v):

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> The University shall have the powers
>
> (i) ...
>
> (ii) ...
>
> (iii) ...
>
> (iv) ...

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(v) to affiliate Colleges to the University under the conditions prescribed and to withdraw such affiliation;

Provided that, no college shall be affiliated to the University unless the permission of the Government to establish such college has been obtained and the terms and conditions, if any, of such permission has been complied with;

Colleges not to be affiliated to any other University and recognition of college by University:

Section 6 (1) No law college or institution imparting legal education within the University area shall be affiliated to any other University other than the Tamil Nadu Dr. Ambedkar Law University.

(2) Any law college or institution imparting legal education affiliated to or associated with or maintained by any other University whether within the State of Tamil Nadu or outside the State of Tamil Nadu shall be recognised by the University for any purpose except with the prior approval of the government and the university concerned."

Therefore, the permission of the Government is required in law, providing in the State, where colleges have to be affiliated under the Tamil Nadu Ambedkar Law University. Therefore, since a Deemed University or a University does not require affiliation, the power mentioned in Section5(V) cannot be applied to University or Deemed University.

26. Next we come to Section 6. Section 6(2) is referred to in the impugned order. It deals with recognition by the Tamil Nadu Ambedkar Law University for any purpose only with the prior approval of the government and the university concerned, Section 6(2) will not apply to the respondent University since the words "if the same is a requirement" in Rule 18, can only mean if permission or no objection from the Government is a requirement for an application for approval of application. That is the only way this can be read and in any event, Section 6(2) deals with recognition by the University and prior approval of the Government. The Deemed University does not seek recognition by the University. It does not seek approval of affiliation. Amended rule will apply only in cases of application for approval of affiliation and since the respondents do not need to seek application for approval of affiliation the rule cannot apply to them and the Bar Council is bound to consider their application to start a Law College.

27. AIR 1999 SC 1167(V. Sudeer Vs. Bar Council of India), which was referred to and where the Rule providing for pre-enrolment training was quashed, the Supreme Court made these observations:

36. We hope and trust that at least now the Bar Council of India may do well to look into these suggestions as well as the observations made by us in the present judgment for salvaging the situation for the entire legal profession in

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India and for putting young entrants at the bar on right track so that after appropriate in-practice training which they get from senior advocates and their guides they can turn out to be efficient advocates for serving the suffering humanity having legal problems to be redressed through them and for helping the cause of justice more effectively."

Recent incidents make us wonder whether the young entrants at the Bar are on the right track at all, and if so, what is the Bar Council going to do about it.

28. The learned Single Judge after dealing with the powers of the University Grants Commission and the Scheme of the University Grants Commission Act held as follows:

"9. Going through the scheme of the UGC Act, it is apparent that the Commission will have the power to recommend to any University the measures necessary for reform and improvement of University education and to advice the University concerned about the action to be taken for the purpose of implementing such recommendation. It will act as an expert body also to advice the Central Government on problems connected with co-ordination of facilities and maintenance of standards in Universities. A combined reading of the above provisions shows that the Commission is the authority to determine the standards in education in respect of Deemed University when such University offers the law degree courses as well. The provisions relating to the coordination and determination of standards, inspection, admission of students, appointment of teachers are all governed by the provisions of the UGC Act. These areas are occupied by the Central legislation enacted under Entry 66 of List I of Schedule VII of the Constitution of India. In this regard, the law laid down by the Apex Court in Bharathi Vidyapeeth case (supra) can be usefully referred to.

Under Section 3 of the Act, deemed university status will be given to those institutions that for historical reasons or for any other circumstances are not universities and yet are doing work of a high standard in specialized academic field compared to a university and that granting of a university status would enable them to further contribute to the course of higher education which would mutually enrich the institution and the university system. Guidelines for considering proposals for declaring an institution as deemed to be university were also issued by UGC. Under the said guidelines aspects relating to admission were specifically entrusted with UGC and admission could be made only through a common entrance test on all-India basis. Such an exercise was intended to maintain a uniform standard and level of excellence. As we have pointed out, admission plays a crucial role in maintaining the high quality of education. And for the

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proper maintenance of academic excellence, as intended by the UGC Act, admission to deemed university have to be made under the control of UGC. This further goes to show that admission procedure to a deemed to be university is fully occupied by Entry 66 of List I and the State cannot exercise any powers over admission procedure.

10. ... The entire reading of the functions of the BCI shows that it may lay down standards of professional conduct and etiquette for advocates; to lay down the procedure to be followed by its disciplinary committee and the disciplinary committee of each State Bar Council; to safeguard the rights, privileges and interests of advocates; to promote and support law reform; to exercise general supervision and control over State Bar Councils; to conduct seminars and organize talks on legal topics, etc. These functions relate only to lay down standards of professional conduct and etiquette by advocate and exercise general supervision and control over State Bar Councils. Only in that context, the BCI has been empowered to recognize Universities whose degree in law will be a qualification for enrollment as an advocate (See AIR 1999 SC 1167)."

and while referring to Section 6 of the Act observed as follows:

"This section also applies only to a law college or institution imparting legal education affiliated to or associated with or maintained by any other University other than Tamil Nadu Dr.Ambedkar Law University whether within the State of Tamil Nadu or outside the State of Tamil Nadu shall be recognised by the University for any purpose except with the prior approval of the Government and the University concerned. This section also does not apply to the University as such or the Deemed University and consequently mandates the approval of affiliation from the University and Page 0985 consequently for the purpose of approval from the State Government. In this regard, it must be kept in mind that when once an institution is declared to be a Deemed University, its activities must be regulated only under the provisions of the UGC Act. In view of the such provisions under the UGC Act, the Legislature thought it fit not to include the Universities or the Deemed Universities to be affiliated to the Tamil Nadu Dr.Ambedkar Law University and therefore, they have excluded the application of Section 6 relating to the affiliation to the Tamil Nadu Dr.Ambedkar Law University by the Universities or Deemed Universities. The submission of the learned counsel for the BCI as to the application of Section 6 to the Deemed University as well is only liable to be rejected. When the provisions of the Act are interpreted, the plain and literal meaning alone should be preferred and if such interpretation is adopted, the submission of the learned Senior Counsel for the Deemed University in regard

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to the non-application of the said section to the Deemed University must be accepted. It is not out of place to mention that even the Tamil Nadu Dr.Ambedkar Law University Act does not either provide or insist an affiliation by the University or Deemed University and the BCI cannot even insist for recognition on a Deemed University for the purpose of approval. Hence the submission of the learned counsel for the BCI in this regard is rejected."

29. The view of the learned Single Judge is the only possible view, if we read the Rules, the Act and the law laid down with regard to the status of the Deemed University.

30. The writ appeal is therefore, dismissed. No costs.

16.11.2007
glp

ORDER: The Writ Appeals having been posted **this day, Monday, the 17th day of December 2007**, for orders pursuant to the order of this Court dated 24.8.2007, 16.11.2007 and made herein, and in the presence of the aforesaid Advocate, the Court made the following Order:

In the light of the majority view expressed, these Writ Appeals are dismissed. The appellant/Bar Council of India, is directed to comply with the direction of the learned Single Judge, within six weeks from the date of production of copy of this order.

All connected Miscellaneous Petitions are closed.

17.12.2007
mra

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1.The Secretary,
Bar Council of India,
No.21, Rouse Avenue,
Institutional Area,
New Delhi 110 002.

2.The Registrar,
The Tamil Nadu Dr.Ambedkar
Law University, No.5, Greenways Road,
Chennai 600 028.

https://hcservices.ecourts.gov.in/hcservices/

3.The Secretary,
Madras High Court Advocate Association,
High Court Buildings, Chennai- 104.

4.The Secretary,
The University, Grants Commission
Bahadurshah Zafar Marg, New Delhi-110 001.

+1cc to Mr.P.R.Gopinathan, Advocate Sr 74507

+1cc to Mr.S.T.S.Murthi, Advocate Sr 74683

+2 ccs to Mr.K.Venkatakrishnan, Advocate Sr 74814, 74816

+1cc to Mr.G.R.Associates, Advocate Sr 74417

jrg[co]
gp,sky,km/20.12

Dated 17.12.2007

ORDER

Wa No.929 and 933 of 2006

Dismissing the appeal preferred against the order of this court dated 20.4.2006 and 21.3.2006 and made in WP Nos.10231/06 and 24928/05 respectively etc. as stated within.

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